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Global Financial Regulatory Reform Proposals: an overview (v2)

The recent financial crisis has resulted in a plethora of governmental and regulatory actions. As the financial markets begin to stabilize, governments are now seeking to develop an improved regulatory environment. The approach appears to have two main objectives: first, decreasing the likelihood of a similar financial crisis recurring; and second, ensuring that the costs of any future failure are not borne by taxpayers but by the failing bank and the financial sector more generally.

Concerns have already been raised over the projected timeframe for the implementation of reform proposals and the possible adverse impact the accumulated proposals could have on financial institutions, financial markets and the wider economy. It also remains to be seen if international agreement on reform is viable. Differences between proposals originating in Europe and the United States have already emerged on significant subjects such as the regulation of fund managers and structural constraints to limit risk. Ultimately, financial institutions will need to adapt to the challenge of a more comprehensive and demanding regulatory environment. This will involve adjusting their business models and adopting effective strategies to address new regulatory requirements.

The purpose of this client publication is to provide an overview of the most important proposals for financial regulatory reform in the United States and Europe, particularly the United Kingdom, and international fora. The first version of this note was published on March 24, 2010. The current version of the note takes into account key proposals that have emerged since then. All additions and updates are noted in blue text.

The reform proposals we discuss broadly fall within the following categories:

- reforms to supervisory frameworks;
- prudential requirements;
- governance;
- recovery and resolution of financial institutions, particularly those operating globally;
- specific market improvement; and
- extension of the reach of financial regulation.

Many of the topics covered in this client publication have been the subject of client publications previously published by Shearman & Sterling. Where appropriate, we have referred to those publications for more in-depth analysis of the specific issues. Our other publications can be found at http://www.shearman.com/Publications/.

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There are currently no firm proposals on this issue from the European Union. However, the European Commission commented in its latest consultation paper on reforms to the Capital Requirements Directive (comprising two directives: Directive 2006/48/EC and Directive 2006/49/EC) that it intends to consider the potential measures available. The European Commission considers that size is a key driver of systemic importance but it is not the only driver. The extent of interconnectedness with other financial firms, the financial infrastructure, the real economy and the ease with which the functions performed by an institution could be substituted by another are all factors for determining the systemic risk posed by an institution. Applying a restriction on size of a systemically important financial institution without regard to whether it had or was abusing a dominant market position would be inconsistent with the EU competition policy. See the section below on Capital Requirements for further details of the proposals to amend the Capital Requirements Directive. The European Commission's consultation, published in October 2009 on proposals for the crisis management and resolution of a failing cross-border bank, also discusses the issue of whether the implementation of the Recovery and Resolution Plans ("RRPs") should automatically force the simplification of legal structures of large institutions, including a greater organization of business in stand-alone subsidiaries that can be ring-fenced and recognized separately in the event of a crisis. The Commission notes that, at international level, there seems to be an assumption that an intended and beneficial effect of such plans would be a reduction in the complexity of financial institution structures. Whilst the Commission recognizes that greater simplification would facilitate crisis management and resolution it considers that further consideration is needed as to the impact on markets, particularly in the context of the European single market of any structural changes to financial institutions. The Commission notes that implementation of the RRP framework would result in greater understanding by authorities of the complex structures that they supervise. In addition, directors and managers would necessarily have to consider how such structures may place constraints on the authorities' choice in the event of reorganization measures being taken.	Proposals may come from the European Union following further debate on this issue.	
UNITED KINGDOM		
House of Commons Inquiry The House of Commons Select Treasury Committee (the "Treasury Committee") conducted an inquiry into this issue, referring to it as the "too important to fail" issue. The Treasury Committee took evidence on: (a) The extent to which banks operating in the UK are interconnected; (b) The relationship between size and risk, and business model (including mutual models) and risk; (c) The pros and cons of a legal separation of low-risk banking activities from high-risk activities (the 'narrow-banking' option); (d) The pros and cons of alternative methods of preventing financial institutions from being 'too important to fail' (e.g., minimum capital and liquidity requirements, living wills and taxation); (e) The challenges posed by cross-border financial institutions and of ways, including subsidiarization as opposed to branches, of	The Treasury Committee recommends that the next committee should undertake work in the area of competition in banking and macro prudential tools.	

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reducing systemic risk on a European or global scale; and (f) The extent to which individual nations, or regional groups, can or should act alone on the regulation of cross-border entities. On March 29, 2010 the Treasury Committee published its Report which assesses the range of reforms currently under consideration against the objectives of an orderly banking system. The following are the key conclusions: (a) It is not possible to define in advance whether or not a particular product will be useful. When a new product is established the regulator's role is to analyze the extent to which the product helps the bank perform its intermediary role and ensure that any risks identified are correctly priced; (b) The pre-funding of the deposit protection system continues to be recommended, despite the cost to firms; (c) The Tripartite authorities should commission research on the benefits of diversification and whether the market might be better served by a larger number of providers, with more specialized firms; (d) Without effective cross-border financial supervision and cooperation, subsidiarization may be necessary to protect individual countries' fiscal bases and financial systems; (e) The European Union cannot rule out the possibility of allowing national regulators to require foreign banks to operate as subsidiaries instead of branches on the basis that the right to operate as a branch is essential to financial integration; and (f) Structural reforms should not be ruled out yet – the debate should remain as wide as possible.		
HM Treasury Consultation In December 2009 HM Treasury issued a paper entitled "Risk, reward and responsibility: the financial sector and society" in which the Government sets out options that could ensure the costs of risk-taking are borne more by the banking sector than by taxpayers. The paper discusses contingent capital, capital insurance, systemic risk levies and resolution funds, and financial transaction tax as possible options. This paper is meant to inform the review being conducted by the International Monetary Fund ("IMF") in response to a request from the G20 at the Pittsburgh Summit.		More detailed proposals from the UK Government and the FSA are expected once there are further developments at international and European level.
FSA Statement In a speech given on March 12, 2010 Hector Sants, Chief Executive of the FSA, stated that a "cocktail of measures" is the right approach to the question of how to reduce the risk of failure in the banking sector and to ensure that if the financial system does fail, the banking sector bears the cost of the failure. The FSA Chairman suggested that the following measures could be used instead of changing the structure of financial institutions: (a) Increased capital and liquidity requirements; (b) Recovery and resolution plans; and		

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(c) Raising a levy from surviving firms after the event in the form of either a general taxation or a specific recovery.		
UNITED STATES		
In the United States, financial regulatory reform continues to be the subject of debate in the U.S. Congress. On December 12, 2009 the House of Representatives passed H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009 (the "House Bill"). The other chamber of Congress, the Senate, has not yet passed companion legislation. If the Senate passes a bill it would then need to be considered by the House, or a House-Senate conference, to reconcile differences between the House and Senate bills and arrive at a single piece of legislation for additional Congressional, and ultimately Presidential, consideration. On March 15, 2010 the Chairman of the Senate Banking Committee, Christopher Dodd, introduced his proposed financial regulatory reform bill, "Restoring American Financial Stability Act 2010" (the "Senate Bill"), for U.S. Senate consideration. While Senator Dodd, a member of the Democratic Party, had initially hoped to introduce a reform bill garnering bi-partisan support, he ultimately introduced the Senate Bill (the Restoring American Financial Stability Act) without the formal backing of any members of the Republican Party. Senator Dodd amended the Senate Bill in certain respects on March 22, 2010 and the modified version of the Bill was approved by the Senate Banking Committee on that date along strict party lines. The Bill was introduced to the full Senate on April 15, 2010. At the moment, it appears likely that Chairman Dodd and Democratic supporters of the Senate Bill will need to seek to reach "compromise" positions on certain aspects of the Bill to facilitate its passage by the full Senate (at least some Republican support will be needed for a bill to be passed in view of the rules, and current composition of, the Senate). Nonetheless, even if this turns out to be the case, the Senate Bill may effectively serve as a template for a final bill. While there are important differences between the House and Senate Bills, there is significant overlap in terms of their coverage - for example, they both include provisions relating to several of the topics covered in this client publication (e.g., the establishment of a "systemic-risk" oversight council, requirements for systemically important financial institutions to develop so-called "living wills", requirements for U.S. public companies to have a compensation committee composed of independent directors, and the creation of a new supervisory framework for over-the-counter derivatives markets, etc.). See our client publications, "U.S. House of Representatives Passes Wall Street Reform Bill: A Preliminary Analysis", dated December 22, 2009, and "U.S. Senate Banking Committee Approves a Sweeping Financial Regulatory Reform Bill", dated April 2, 2010.		
The House of Representatives The House of Representatives passed the House Bill on December 12, 2009. The House Bill gives authority to a council of senior financial regulatory agency heads to determine whether a financial institution should be subject to enhanced prudential and regulatory standards because its material financial distress could pose a threat to financial stability or the economy, or the institution's size and other factors could pose such a threat. Such institutions are subject to the following: (a) Requirements to segregate financial activities permissible under the Bank Holding Company Act from commercial activities, if any;		

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(b) Leverage limit of no more than 15 to one; (c) Risk-based capital requirements and leverage limits, liquidity requirements, concentration requirements and the like stricter than those applied to bank or financial holding companies generally; (d) Heightened requirements on bank and functionally regulated subsidiaries; (e) Limits on the institution's reliance on short-term debt; (f) Prompt corrective action requirements for failure to meet enhanced capital requirements, including limits on activities, growth, transactions among affiliates and senior officer compensation; (g) Quarterly stress tests with results reported to an agency, and annual tests conducted by the Federal Reserve; (h) Preparation of a resolution plan (or "living will"); (i) If appropriate to mitigate systemic risk, prohibition on conducting certain activities or imposition of conditions of conducting them, tightening of prudential standards, limit on ability to merge or acquire other companies, and restrictions on the offering of financial products; and (j) Prohibition on proprietary trading if the Federal Reserve determines that such trading poses an existing or foreseeable threat to the company or financial system.		
The Senate On March 15, 2010 U.S. Senate Banking Committee Chairman Christopher Dodd issued his proposed Senate Bill. The Senate Bill was approved by the Senate Banking Committee on March 22, 2010 and introduced to the full Senate on April 15, 2010. The Senate Bill gives authority to a council of senior financial regulatory agency heads to determine whether a non-bank financial company should be subject to enhanced prudential and regulatory standards because it is determined to "pose a threat to the financial stability of the United States". Such institutions, as well as (i) "large, interconnected" U.S. bank holding companies with at least $50 billion in consolidated assets, and (ii) "large, interconnected" non-U.S. banks that have U.S. banking operations with at least $50 billion in consolidated assets are subject to the following: (a) Risk-based capital requirements; (b) Leverage limits; (c) Liquidity requirements; (d) Resolution plan and credit exposure report requirements; and (e) Concentration limits.		

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In addition, the U.S. Federal Reserve may promulgate regulations or otherwise make decisions requiring such companies to: (a) Maintain an amount of contingent capital; (b) Make enhanced public disclosures; and (c) Comply with new risk management requirements. The Obama Administration proposed "Volcker Rules" are generally reflected in the Senate Bill. In this regard, the Senate Bill includes the following two restrictions: (a) Subject to recommendations of the newly formed council of senior financial regulatory agency heads and to joint rules by the U.S. federal banking agencies, an FDIC insured depository institution, a company that controls such an institution or is treated as a bank holding company for purposes of the U.S. Bank Holding Company Act (e.g., a non-U.S. bank with U.S. branches or agencies), and any subsidiaries of any of the foregoing, would be prohibited from: proprietary trading, sponsoring and investing in hedge funds and private equity funds, and from having certain financial relationships with those hedge funds or private equity funds for which they serve as investment manager or investment adviser. (b) Subject to recommendations of the newly formed council of senior financial regulatory heads, a financial company may not merge or consolidate with, acquire all or substantially all of the assets of, or otherwise acquire control of, another company, if the total consolidated liabilities of the acquiring financial company upon consummation of the transaction would exceed 10 percent of the aggregate consolidated liabilities of all financial companies at the end of the calendar year preceding the transaction. See our client publication, "Understanding the Significance of the Obama Administration's Proposed "Volcker Rules", dated February 17, 2010.		
INTERNATIONAL		
FSB Press Release The Financial Stability Board ("FSB") issued a press release shortly after the Obama proposals to ban banks from trading for their own account and to limit their private fund activities (i.e., the "Volcker Rules") were publicized. The release states that the Obama proposals are one of a range of options under consideration by the FSB in its work to address the issue of large financial institutions failing. Other options under consideration include: targeted capital, leverage and liquidity requirements, improved supervisory approaches, simplification of firm structures, strengthened national and cross-border resolution frameworks and changes to financial infrastructure to reduce contagion risks.		The FSB is due to publish an interim report in June 2010 and final recommendations should be presented to the G20 in October 2010.

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IMF Proposals for Regulatory Capital Charges for Too-Connected-to Fail-Institutions On April 1, 2010 the IMF published a working paper entitled "Regulatory Capital Charges for Too-Connected-to Fail-Institutions: A Practical Proposal". The paper proposes the introduction of regulatory capital charges proportional to how interconnected an institution is within a financial system or to other systemic institutions. Further details of the paper are set out in the Capital Requirements section below.		

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EUROPEAN UNION		
European Commission Consultation The European Commission published a consultation paper in October 2009 on proposals for the crisis management and resolution of a failing cross-border bank. The proposals cover all financial institutions. The main proposals of the consultation are: (a) Harmonization of powers for supervisors to require the preparation of contingency and resolution plans; (b) Introduction of intra-group asset transfers so that large firms can manage liquidity positions and assist in stabilizing an entity within the group. Such a regime would need to address the risks of liability for directors and consider the impact on the principle of limited liability and separate legal personality of group entities in relation to challenges from shareholders or creditors; (c) Harmonization of the powers of authorities under special resolution regimes for banks, including the powers to arrange acquisition by a private sector purchaser, transfer assets and liabilities to a bridge bank or partially transfer assets to a 'bad bank'; (d) Introduction of harmonized threshold conditions which trigger the powers of authorities to intervene in a failing institution; and (e) Harmonization and development of supervisory tools for early intervention. The European Commission published two reports on April 20, 2010. The first report, dated November 2009, is a study on pre-insolvency, early intervention, reorganization and liquidation of banking groups. The second report, dated December 2009, considers reducing obstacles to asset transfers within cross-border banking groups during a financial crisis.	The consultation closed on January 21, 2010. On March 11, 2010 the European Commission published an overview of the results of the consultation. In its Work Programme for 2010, published on March 31, 2010, the European Commission stated that it intends to issue a Communication on options for bank resolution funds in Q2 2010.	
European Parliament Draft Report The European Parliament has published a draft report and recommendations on cross-border crisis management. The recommendations in the draft report are for the establishment of: (a) A common EU crisis management framework including a creating a common resolution and insolvency law applicable to all banking institutions operation in the EU, making resolution plans a mandatory regulatory requirement, designing a supervisory rating for banks based on a common set of quantitative and qualitative indicators and expanding the minimum intervention toolbox available to supervisors; (b) A new special regime known as the European Bank Company law to regulate systemic banks under which the new European Banking Authority (the "EBA") would have the ultimate decision power; (c) An EU Financial Stability Fund, under the responsibility of the EBA, to finance interventions aimed at preserving the financial system's stability and limit contagion from failing banks; and (d) A resolution unit within the EBA to lead resolution and insolvency procedures for systemic banks.	The draft report requests the European Commission to submit proposals on an EU crisis management framework, a resolution unit and an EU financial stability fund by December 31, 2011. Before April 2011 the Commission is to adopt a measure setting up criteria for the definition of systemic banks. By April 2011 the Commission must also submit proposals on the structure, governance, size, operating model and implementation timeframe of the EU Financial Stability Fund.	

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UNITED KINGDOM		
The current proposals in the UK in this area focus on the resolution of investment firms. This is because the UK has already implemented a Special Resolution Regime through the Banking Act 2009, which came into effect on February 21, 2009, for banks. However, some of the proposals being discussed at international and European level relate to all financial institutions and any future measures adopted by those bodies which are binding on the UK could impact a wider range of UK financial institutions.		
HM Treasury Consultation on Establishing Resolution Arrangements for Investment Banks In December 2009 HM Treasury issued a consultation paper entitled "Establishing Resolution Arrangements for Investment Banks" which sets out the following proposals: (a) A new administration regime for failed investment firms so that failures are conducted with due regard to financial stability, the proper functioning of markets and the need for the speedy return of client money and assets; (b) Business Resolution Officer ("BRO"), to be appointed at board level, to manage resolution, both in the run up to and following insolvency. It is likely that FSA approval of appointment of the BRO would be required; (c) Resolution plans comprising: (i) internal resolution actions during the two to three weeks prior to failure focused on simplification, rationalization and reconciliation; and (ii) external (market-facing) actions for a wind-down period of two to three days when it is clear that either the directors or authorities will have to start administration proceedings; (d) Business Information Packs ("BIPs") which would be available to administrators to assist them to rapidly understand the business and facilitate the settlement of trades and the return of client assets in a timely manner. BIPs would be a contemporaneous and accurate record of the investment firm's business. BIPs would include, in addition to other information, details of the business structure of the firm, operational information, including location and manner of reporting, business strategy and decision making information, list of key personnel, key operational costs and logistical information such as supplier contracts and outsourcing arrangements and funding sources. BIPs need to be amended regularly; and (e) Continuity of services from key staff and suppliers which are essential for ensuring the continued operation of the firm in insolvency such that the location of service providers (e.g., in other jurisdictions) and the interconnectedness in large firms of human resources does not prevent continued operation. A requirement that firms set aside an operational reserve of liquid funds that can be accessed during insolvency to pay key staff and suppliers is also included. This consultation paper also deals with custody/client money; see the section below for more information.	The consultation closed on March 16, 2010. The UK Government is expected to publish firmer proposals and draft legislation later in 2010.	

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FSA Pilot The FSA has not published any firm proposals on this issue but it has started a pilot run of Recovery and Resolution Plans ("RRPs") in a few financial institutions.	The FSA pilot of RRPs is due to be completed in mid-2010. The FSA is expected to report on its findings following the pilot.	
Financial Services Act 2010 The Financial Services Act 2010 (the "FS Act 2010") provides for a statutory duty to be placed on the FSA to require authorized firms, which must include firms in respect of which the powers under the special resolution regime in the Banking Act 2009 are exercisable, to produce RRPs. The FSA is also required to consider whether those RRPs are satisfactory and to take appropriate action to remedy any failure in a plan. Some sections of the FS Act 2010 came into force on that day, but others, such as section 7 on RRPs, will come into effect two months later.	The Financial Services Act 2010 requires the FSA to consult with HM Treasury and the Bank of England before drafting rules on RRPs.	
UNITED STATES		
The House of Representatives The House of Representatives passed H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009 (the "House Bill") on December 12, 2009. The House Bill requires financial companies subject to stricter standards (see the section on Restructuring of Financial Institutions above) to develop resolution plans designed to assist in the rapid and orderly resolution of the company. The plan must include information on: (a) Nature and extent of credit exposure to other significant financial companies; (b) Nature and extent of credit exposure of other significant financial companies to it; (c) Description of ownership structure, assets, liabilities and contractual obligations; and (d) Cross-guarantees tied to different securities, list of major counterparties, and process to determine where the institution's collateral is pledged. The plan must be reviewed annually with financial regulatory agencies. The House Bill also provides for a special dissolution regime for systemically important financial institutions which, in certain circumstances, would allow the FDIC to act as the receiver of large, interconnected financial firms whose dissolution could not be handled effectively by the bankruptcy system. The House Bill calls for the creation of a systemic resolution fund intended to ensure that the costs of future government assistance for large, failing financial firms are borne by other financial firms and not the government. A fund administrator would be required to assess large financial firms before incurring dissolution costs on a risk-assessed basis. Assessed firms would have to have at least $50 billion in total assets, except that "hedge funds" would have to have at least $10 billion. The fund would total $150 billion. It could not be used to "bail out" the institution but rather to manage its liquidation and dissolution.	The House Bill was passed in December 2009.	The House Bill was passed. If and when a corresponding bill will be passed by the Senate is unknown.

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The Senate On March 15, 2010, U.S. Senate Banking Committee Chairman Christopher Dodd issued his proposed "Restoring American Financial Stability Act 2010" (the "Senate Bill") for U.S. Senate consideration. The Senate Bill was approved by the Senate Banking Committee on March 22, 2010 and introduced to the full Senate on April 15, 2010. The Senate Bill requires financial companies subject to heightened standards (see the section on Restructuring of Financial Institutions above) to develop a resolution plan designed to assist in the rapid and orderly resolution of the company (the plan must be provided to the Federal Reserve, the FDIC and the council of senior financial regulatory agency heads periodically). The Senate Bill creates a process entitled "orderly liquidation" which, in certain circumstances, would allow the FDIC to act as the receiver of large, interconnected financial firms whose dissolution could not be handled effectively by the bankruptcy system. The Senate Bill also calls for the creation of the Orderly Liquidation Fund to ensure that the costs of future government assistance for large, failing firms are borne by other financial firms and not by the government. The Orderly Liquidation Fund would be financed through risk-based assessments on bank holding companies with total consolidated assets equal to or greater than $50 billion and systemically important non-bank financial companies. The target size of the Orderly Liquidation Fund is $50 billion. It could not be used to "bail out" the institution but rather to manage its liquidation and dissolution.	The Senate Bill was approved by the Senate Banking Committee in March 2010. The full Senate will debate and offer amendments to the Senate Bill. If the Senate passes a bill, then it would be considered by the House of Representatives to deal with differences from the House Bill or be sent to a conference of the House of Representatives and Senate for final resolution.	If and when a corresponding bill will be passed by the Senate is unknown.
INTERNATIONAL		
Basel Recommendations for the Resolution of Cross-border Banks The Basel Committee on Banking Supervision proposed 10 recommendations for the resolution of cross-border banks in September 2009. On March 18, 2010 the Basel Committee on Banking Supervision published its final report and recommendations. The Recommendations are: (a) Effective national resolution powers: all countries should have special resolution regimes to deal with failing financial institutions in place which include, amongst others, (i) a process for early intervention, (ii) powers to operate and resolve the failing financial institution, and (iii) options facilitating continuity for essential operations including transfer of assets, liabilities and contractual relationships; (b) Frameworks to coordinate the resolution of financial groups: each jurisdiction should have a national framework to coordinate resolution of legal entities of financial groups within its jurisdiction; (c) Convergence of the above two national resolution tools to facilitate resolution of cross-border financial institutions; (d) Consideration of the development of procedures to facilitate the mutual recognition of crisis management and resolution proceedings and measures; (e) Where group structures are considered to be too complex or interconnected by home and host resolution authorities, consideration of regulatory incentives, such as capital requirements, to encourage the simplification of structures to facilitate effective resolution; (f) Development of contingency plans by all cross-border financial institutions to preserve the firm as a going concern, promote resiliency	The Basel Committee on Banking Supervision has not indicated its next steps in this area.	

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of key functions and facilitate the rapid resolution or wind-down of a firm, if necessary. Such planning should be a regular component of supervisory oversight, take into account cross-border dependencies, implications of legal separateness of entities for resolution and the possible exercise of intervention and resolution powers; (g) Key home and host authorities should agree arrangements that ensure the timely production and sharing of needed information for the purposes of contingency planning during normal times and for crisis management and resolution during periods of stress; (h) Promotion of risk mitigation techniques including enforceable netting agreements, collateralization, segregation of client positions, standardization of derivatives contracts and the use of central counterparties, exchanges and trade repositories for such contracts; (i) Powers for authorities to legally temporarily delay immediate operation of contractual termination clauses so that transfer of certain market contracts to another sound financial institution may be completed; and (j) National authorities should develop clear options and principles for the exit from public intervention.		
IMF Report on Crisis Management and Resolution for a European Banking System On March 19, 2010 the International Monetary Fund published a working paper entitled "Crisis Management and Resolution for a European Banking System". The paper proposes a framework for coordinating regulatory interventions, resolution actions and insolvency proceedings of a failing banking group. The IMF calls for a significant degree of harmonization for a cross-border resolution legal framework. Other proposals include additional or more specific early intervention tools, thresholds for early intervention, the establishment of a European Resolution Authority and the establishment of a European deposit insurance and resolution fund.		

CUSTODY / CLIENT MONEY

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EUROPEAN UNION		
The European Commission has stated that its draft Directive on legal certainty of securities holding and transactions will ensure that any activity of safekeeping and administration of securities will fall under an appropriate supervisory regime. For further information see the section below on Securities Holding and Transactions. The European bodies are taking the issue of custody and client money into consideration under their work on cross-border bank resolution. See the section on Resolution of Financial Institutions for further details.	Currently, the European Commission and Member States are considering responses to the consultation on securities holding and transactions with a view to issuing a further consultation paper in March/April 2010.	The European Commission intends to present draft legislation on securities holding and transactions by mid-2010 and for legislation to be finalized in mid-2011 with transposition into Member States' law by the end of 2012.
UNITED KINGDOM		
HM Treasury Consultation on Establishing Resolution Arrangements for Investment Banks In December 2009 HM Treasury issued a consultation paper entitled "Establishing Resolution Arrangements for Investment Banks". The paper included the following proposals on custody/client money: (a) Establishing a Client Asset Agency (to monitor pre-insolvency best practice in the treatment of client money and assets) and, upon the failure of a firm, a Client Asset Trustee (to prioritize the return of client money and assets post-insolvency); (b) Shortfalls in any omnibus asset pool to be borne by all participants in the pool in accordance with their entitlements. A shortfall would not arise where the customer's entitlement is contractual only or where pursuant to the agreement between the customer and the intermediary a credit is provisional only, and is reversed or the intermediary disposes of an interest in securities in exercise of a power of re-use; (c) Mandatory product warnings in agreements setting out: (i) the loss of a client's rights under rehypothecation, (ii) recommending client to negotiate limits to rights or re-use and to negotiate when and for what purpose the right of re-use can be exercised, and (iii) the implications of holding client assets in an omnibus custodian account; (d) Increasing transparency through increased reporting, record-keeping and audited disclosures and making client asset officers directly accountable; (e) Increasing the speed of return of client money and assets through the establishment of bankruptcy-remote SPVs for client assets, limitations on the transfer of client money, changing the regime on custodians' right of lien over client assets, requiring firms to have the ability to divide client money into different pools and establishing bar dates for client claims; (f) Extend protections which are currently available to clearing houses and exchanges to multilateral trading facilities and require central counterparties to offer facilities for their members to segregate client business. Consideration is also being given to imposing a requirement on investment firms to offer facilities to segregate client business (i.e., to ensure a choice of accounts for clients); and (g) The Government would like some initiatives to be led by changes to market practice such as clarification in agreements relating to the	The consultation closed on March 16, 2010. HM Treasury intends to take the proposals forward by publishing a document with firm proposals and draft legislation in 2010. The FSA will publish a consultation paper in September 2010 on the scope and increased standard of audit reporting. The FSA intends to consult with the industry in 2010/2011 on new policies and supervisory arrangements to create a client money and assets trustee and/or agency.	

CUSTODY / CLIENT MONEY

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
legal group entity which is the counterparty for agreements, provisions which potentially affect the protections offered by the FSA rules on client money and assets, set-off and liens and event of default arrangements.		
FSA Consultation on Enhancing the Client Money and Assets Rules On March 30, 2010 the FSA published its consultation paper on enhancing the rules in the FSA Handbook of Rules on client assets and client money. The consultation paper considers some of the proposals set out in HM Treasury's paper of December 2009 "Establishing Resolution Arrangements for Investment Banks". The main proposals are: (a) To create a requirement that all prime brokerage agreements contain a disclosure annex which summarizes any contractual re-hypothecation provisions. The summary will highlight relevant definitions, such as net client indebtedness and contract limit on re-hypothecation, include a statement of the risk to the client upon the prime broker's default and cross reference detailed provisions in the agreement. The annex would not be of any legal effect and the contractual terms will remain in the main agreement but firms would need to ensure that the annex is fair and not misleading. These requirements would apply to UK authorized prime brokers only and not to incoming European Economic Area firms ("EEA firms") conducting investment business under MiFID. During 2010 the FSA will consider extending these requirements to other market participants. This requirement would be subject to a six month transitional period as it will require prime brokers to re-paper existing agreements to include this annex; (b) To create a requirement for client money and asset holdings to be reported daily to all prime brokerage clients (in practice, most prime brokers have already started offering this service) in a standardized format so that clients can properly manage their exposures. These requirements would apply to UK authorized prime brokers only and not to incoming EEA firms conducting investment business under MiFID. During 2010 the FSA will consider extending these requirements to other market participants; (c) The introduction of a restriction of placing a client's money in client bank accounts held within institutions within the same group to 20 percent, excluding the total balance of client transaction accounts to ensure greater client protection and market stability in the event of a firm's failure. This requirement would apply to UK authorized firms that place client money in client bank accounts held with a group bank, credit institution or qualifying money market fund. The restriction would not apply to incoming EEA firms conducting investment business under MiFID. The FSA will consider extending the restriction to general insurance intermediaries when it reviews Insurance Mediation Activity at the beginning of 2011; (d) To introduce a prohibition on the use of general liens in custodian agreements except where a firm does not pay custodian fees and charges to the third party holding the custody assets. This prohibition would apply to all UK authorized investment firms and the overseas branches of those UK firms but not to incoming EEA firms conducting investment business under MiFID; (e) To establish a client money and assets oversight controlled function whereby one person in certain firms will have ultimate oversight responsibility for client money and assets. This requirement would apply to all UK authorized firms and the overseas branches of those UK firms but not to incoming EEA firms conducting investment business under MiFID; and	The FSA consultation closes on June 30, 2010 and a policy statement with final rules is expected in Q3 2010. The proposals in (a) to (c) are subject to discussions currently being held between the FSA and the European Commission. In July 2010 the FSA will clarify provisions on the risk of firms inappropriately using title transfer arrangements. Firms have also asked for guidance on the use of buffers in their client money accounts. The FSA plans to engage with firms on this during the first half of 2010.	

CUSTODY / CLIENT MONEY

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
(f) Re-introducing a client money and assets return, to be called the CMAR. The CMAR will be reviewed and authorized by the newly established client money and assets oversight person on a monthly basis for medium and large firms and bi-annually for small firms. The CMAR would require information on the method firms use to segregate client money, reconciliations and information on record keeping, breaches and outsourcing. The FSA made changes to the client money and assets rules in February 2009 and April 2010 in response to shortcomings identified in those rules, mostly as a result of the collapse of Lehman and current litigation on those issues. See our client publications, "Holding Financial Assets with UK Financial Institutions: Lessons from Lehman, Global Trader and the Financial Crisis" dated October 1, 2009 and "More Lessons from Lehman: Protecting Client Assets Held with UK-Incorporated Investment Banking Entities" dated December 23, 2009.		
FSA Report on Review of Firms On January 21, 2010 the FSA published a report on its findings following a nine month review of firms and their compliance with the FSA rules on client assets and money. The main findings of the FSA were: (a) Inadequate senior management oversight and control was often the underlying cause of more serious breaches of the FSA client money and asset rules; (b) An inability to locate trust acknowledgements or firms not checking that all the details and confirmations were correct and complete. The FSA states in the report that it expects firms to be able to demonstrate to it that they have the appropriate documentation in place; (c) Due diligence on the selection and use of banks is often inadequate or poorly documented. Most firms relied only on the credit ratings of banks to make their selection. This is insufficient. Firms are expected to perform appropriate due diligence beyond this on an ongoing basis; (d) Reconciliations were delayed or completely overlooked. The FSA plans to consult on proposals to improve Handbook guidance for client money and asset auditors in due course; (e) Inappropriate claims of ownership over client money, for example by title transfer. The FSA is concerned that the use of title transfer arrangements is far more extensive than it had first envisaged and intends to clarify the rules in its consultation paper in Q1 2010; and (f) Issues with third party administrators - errors not being corrected. Firms have been required to bring practices into line with legal requirements. Various enforcement actions have been brought. See our client publications, "Holding Financial Assets with UK Financial Institutions: Lessons from Lehman, Global Trader and the Financial Crisis" dated October 1, 2009 and "More Lessons from Lehman: Protecting Client Assets Held with UK-Incorporated Investment Banking Entities" dated December 23, 2009.		

CUSTODY / CLIENT MONEY

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
UNITED STATES		
SEC Investment Custody Rules On December 30, 2009 the SEC amended the investment adviser custody rules under the U.S. Investment Advisers Act of 1940. These rules apply to any investment adviser registered with the SEC that holds custody of its clients' funds or securities. The amendments to the custody rules include: (a) Expanding the definition of "custody" so that an investment adviser would have custody of any client securities or funds that are held directly or indirectly by a "related person"; (b) Expanding the requirements for an annual surprise examination of certain investment advisers with custody of client funds or securities; (c) Requiring a new annual internal control report for an investment adviser that serves, or has a related person serve, as a qualified custodian with respect to client funds or securities; (d) Modifying the account statement delivery rule; and (e) Provisions likely to result in a greater prevalence of annual investment fund audits and distribution of financial statements to fund investors. See our client publication "SEC Amends Investment Adviser Custody Rules" dated January 7, 2010.	The SEC has adopted the amendments. The amendments will affect investment advisers worldwide in the likely event that U.S. financial reform legislation eventually requires a broader category of investment advisers to register with the SEC.	Parts of the amendments first required compliance beginning on March 12, 2010 with other parts requiring compliance over the next year.
The House of Representatives The House of Representatives passed H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009 (the "House Bill") on December 12, 2009. The bill proposes amendments to the U.S. Investment Company Act of 1940 and the U.S. Investment Advisers Act of 1940 to require SEC-registered investment advisers to maintain and preserve records related to the custody or use of clients' securities that are in the custody of the investment adviser.	The House Bill was passed in December 2009.	The House Bill was passed. If and when a corresponding bill will be passed by the Senate is unknown.
The Senate On March 15, 2010 U.S. Senate Banking Committee Chairman Christopher Dodd issued his proposed "Restoring American Financial Stability Act 2010" (the "Senate Bill") for U.S. Senate consideration. The Senate Bill was approved by the Senate Banking Committee on March 22, 2010 and introduced to the full Senate on April 15, 2010. The Senate Bill provides the SEC authority to adopt rules that require a registered investment adviser to take steps to safeguard client assets over which an investment adviser has custody, including by requiring verification of such assets by an independent public accountant.	The Senate Bill was approved by the Senate Banking Committee in March 2010. The full Senate will debate and offer amendments to the Senate Bill. If the Senate passes a bill, then it would be considered by the House of Representatives to deal with differences from the House Bill or be sent to a conference of the House of Representatives and Senate for final resolution.	

CUSTODY / CLIENT MONEY

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
INTERNATIONAL		
There are no firm proposals on custody/client money but international bodies are taking this area into consideration under their work on cross-border bank resolution. See the section on Resolution of Financial Institutions for further details.		

SUPERVISORY INFRASTRUCTURE

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
EUROPEAN UNION		
European Commission Legislative Proposals In September 2009 the European Commission published draft regulations to amend EU supervision of the financial sector. The proposals include: (a) Establishment of a European Systemic Risk Board (the "ESRB") to provide macro-prudential supervision, give early warning of any growing systemic risks and, where necessary, recommend action to deal with such risks; and (b) Replacement of the Lamfalussy Level 3 committees with three new European Supervisory Authorities ("ESAs"): the European Securities and Markets Authority (the "ESMA"), European Banking Authority ("EBA") and European Insurance and Occupational Pensions Authority ("EIOPA"). The ESAs would have certain executive, as well as advisory, powers, and would co-ordinate on micro-prudential supervision with national regulators under a new European System of Financial Supervisors (the "ESFS"). The ESFS would co-exist with the existing system of colleges of supervisors that oversee cross-border financial groups. On March 19, 2010 the International Monetary Fund called for the establishment of a European Resolution Authority. See the section on Resolution of Financial Institutions for further details.	The European Council is still in the process of reaching agreement among its members as to the text of the legislation. The June 15, 2010 is the indicative date for the European Parliament to adopt the legislation. Regulations are directly applicable, and the proposed legislation would therefore have effect throughout Europe upon entry into force without the need for Member States to transpose the legislation into their national laws.	If passed, the draft regulations would come into force on January 1, 2011.
UNITED KINGDOM		
Financial Services Act 2010 The Financial Services Act 2010 (the "FS Act 2010") was passed on April 8, 2010. The FS Act 2010 provides that the FSA must establish a consumer financial education body. On April 15, 2010 the FSA announced the appointment of Tony Hobman as the chief executive of the newly created Consumer Financial Education Body. The Financial Services Bill, as proposed, would have provided a statutory basis for both the new Council for Financial Stability (the "CFS"). The provisions on the CFS were removed from the Bill at a late stage in its progress through Parliament and are not included in the FS Act 2010. In practice, the Government replaced the Tripartite Standing Committee with the CFS in late 2009 and therefore, although it has not been statutorily formalized, the CFS is currently in existence. The first meeting of the CFS was held in January 2010, comprising the Chancellor of the Exchequer (who chairs the CFS), the Governor of the Bank of England and the Chairman of the FSA. On March 11, 2010, the FSA, together with the Government, launched the national money guidance service using the Moneymadeclear brand following a successful one-year pathfinder project in the north of England. The new service offers consumer guidance on everything to do with personal finance. On March 11, 2010 the FSA, the Office of Fair Trading and the Financial Ombudsman Services proposed the creation of a new joint consumer protection committee. The purpose of the committee would be to identify risks which could result in widespread problems and determine fast and effective ways of dealing with the problems either through regulatory action or consumer complaints.	Responses to the joint FSA/FOS/OFT consultation on a new consumer protection committee are due by June 10, 2010.	

SUPERVISORY INFRASTRUCTURE

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
A general election is being held in the UK on May 6, 2010. The structure and fate of the current regulatory system and bodies will be determined by the incoming administration. The Conservative Party has previously published a white paper outlining its plans to abolish the FSA and transfer its powers to the Bank of England and to establish a new consumer protection agency.		
UNITED STATES		
The House of Representatives The House of Representatives passed H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009 (the "House Bill") on December 12, 2009. The House Bill establishes a new council of senior financial agency heads to monitor systemic-risks (see the section on Restructuring of Financial Institutions above). The House Bill also includes provisions designed to reorganize and consolidate two of the four U.S. federal bank regulators – the Office of the Comptroller of the Currency ("OCC") and the Office of Thrift Supervision ("OTS"). In particular, the OTS (which currently regulates federal savings associations) becomes a division of the OCC (which would continue to be the primary regulator of national banks and would also become the regulator of federal savings associations).	The House Bill was passed in December 2009.	The House Bill was passed. If and when a corresponding bill will be passed by the Senate is unknown
The Senate On March 15, 2010, U.S. Senate Banking Committee Chairman Christopher Dodd issued his proposed "Restoring American Financial Stability Act 2010" (the "Senate Bill") for U.S. Senate consideration. The Senate Bill was approved by the Senate Banking Committee on March 22, 2010 and introduced to the full Senate on April 15, 2010. Like the House Bill, the Senate Bill establishes a new council of senior financial agency heads to monitor systemic-risks (see the section on Restructuring of Financial Institutions above). The Senate Bill includes provisions designed to partially realign U.S. supervisory authority among the U.S. federal banking agencies. In particular: (a) The Federal Reserve (which currently regulates U.S. bank holding companies and state banks that are members of the Federal Reserve System) would regulate bank and thrift holding companies that have assets in excess of $50 billion; (b) The FDIC (which currently regulates state banks that are not members of the Federal Reserve System) would be responsible for regulating all FDIC-insured state banks and thrifts along with holding companies of FDIC-state banks and thrifts with consolidated assets totaling less than $50 billion); (c) OCC would regulate all national banks and federal thrifts along with holding companies of national banks and federal thrifts with consolidated assets totaling less than $50 billion; and (d) The OTS would be consolidated into the OCC and eliminated. See New York Law Journal article, "Translating 'Macro-Prudential Supervision' Principles Into Law: a focus on the 'forest' instead of just	The Senate Bill was approved by the Senate Banking Committee in March 2010. The full Senate will debate and offer amendments to the Senate Bill. If the Senate passes a bill, then it would be considered by the House of Representatives to deal with differences from the House Bill or be sent to a conference of the House of Representatives and Senate for final resolution.	

SUPERVISORY INFRASTRUCTURE

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
the 'trees'" by Bradley K. Sabel and Gregg L. Rozansky available at http://www.shearman.com/translating-macro-prudential-supervision-principles-into-law-02-01-2010/.		
INTERNATIONAL		
Establishment of the FSB The Financial Stability Board (the "FSB") was established in April 2009 as the successor to the Financial Stability Forum. The FSB comprises senior representatives of national financial authorities (central banks, regulatory and supervisory authorities and ministries of finance), international financial institutions, standard setting bodies, and committees of central bank experts. The FSB's mandate is to: (a) Assess vulnerabilities affecting the financial system and identify and oversee action needed to address them; (b) Promote co-ordination and information exchange among authorities responsible for financial stability; (c) Monitor and advise on market developments and their implications for regulatory policy; (d) Advise on and monitor best practice in meeting regulatory standards; (e) Undertake joint strategic reviews of the policy development work of the international standard setting bodies to ensure their work is timely, coordinated, focused on priorities, and addresses gaps; (f) Set guidelines for and support the establishment of supervisory colleges; (g) Manage contingency planning for cross-border crisis management, particularly with respect to systemically important firms; and (h) Collaborate with the International Monetary Fund to conduct Early Warning Exercises.	On April 23, 2010 the FSB reported to the G20 Finance Ministers and Central Bank Governors on progress in implementing the G20 recommendations for strengthening financial stability. The report covers the policy development work at international level and implementation at national and regional levels by FSB member jurisdictions. The next G20 Summit is being held in June 2010 in Canada.	
Basel Consultation on Promoting and Strengthening the Operation of Supervisory Colleges On March 30, 2010 the Basel Committee on Banking Supervision published a consultation paper on promoting and strengthening the operation of supervisory colleges (i.e., working groups of relevant supervisors of an international banking group). The consultation paper proposed a set of eight principles which aim to promote and strengthen the operation of supervisory colleges. The proposed principles relate to college objectives and structures, information sharing, communication channels, collaborative work, interaction with supervised firms, crisis management and macro-prudential work.	Comments on the Basel Committee on Banking Supervision consultation on supervisory colleges are due by June 30, 2010.	

CAPITAL REQUIREMENTS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
EUROPEAN UNION		
European Proposals and Adopted Amendments The European Commission started consulting on and implementing changes to the Capital Requirements Directive (comprising two directives: Directive 2006/48/EC and Directive 2006/49/EC) (the "CRD") in late 2008 in response to the financial crisis. Below is an outline of the measures that have been adopted and those that are still proposed. The terms CRD II, CRD III and CRD IV are used for these measures.	CEBS announced that it will be conducting a quantitative impact study in parallel with the study being undertaken by the Basel Committee on Banking Supervision.	
CRD II Directive 2009/111/EC was adopted on November 17, 2009. This Directive includes changes to: (a) The treatment of hybrid capital instruments, including requirements for such instruments to be included in institutions' original own funds; (b) A revised large exposures regime including common reporting on such exposures; (c) Risk management of supervision including a requirement to ensure that a firm does not invest in any securitization unless the originator retains a net economic interest of no less than five percent; (d) The establishment of colleges of supervisors for supervision of cross-border banking groups; and (e) Liquidity risk. The Committee of European Banking Supervisors ("CEBS") published guidelines in respect of: (a) The treatment of hybrid instruments to ensure the convergence of supervisory practices and cover permanence, flexibility of payments, loss absorbency, limits and SPV issuances. These guidelines should be applied from December 31, 2010. (b) The revised large exposures regime to provide clarity on the concept of interconnection, in particular when control issues or economic dependence should lead to the grouping of clients and the treatment of schemes with exposures to underlying assets for large exposure purposes. These guidelines should be applied from December 31, 2010. (c) Common reporting of large exposures including a common reporting template to ensure harmonization across Europe. The uniform reporting is only binding from December 31, 2012 under Article 74(2) of Directive 2006/48/EC but CEBS recommends that supervisors incorporate the large exposures reporting set out in its guidelines in the interim period. On March 11, 2010 CEBS published a consultation paper on guidelines on the large exposures exemptions. CRD II provides exemptions from large exposure rules for certain short-term exposures arising from the provision of money transmission, correspondent banking, clearing and settlement and custody activities. CEBS is consulting to ensure harmonization across Europe among supervisors by clarifying the eligibility criteria for exposures to qualify for exemption from the large exposure regime.	Member States will need to transpose the amendments from CRD II into their national law and ensure that each of the CEBS guidelines is also applied by their applicable dates. The European Commission will report on its review of the securitization retention (whether an increase of the five percent. securitization retention should be proposed and whether the methods of calculating the retention requirement deliver their objective).	The CRD II amendments must be transposed into Member States' national law by October 31, 2010 and will apply from December 31, 2010. The finalized CEBS guidelines will apply from December 31, 2010.

CAPITAL REQUIREMENTS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
On April 7, 2010 CEBS published a consultation paper on draft guidelines on the joint assessment and joint decision of consolidating and host supervisors on the capital adequacy of EEA cross-border banking groups. CRD II requires CEBS to prepare guidelines to assist in the implementation of the capital adequacy provisions and the convergence of supervisory practices on the joint decision process.		
CRD III The Commission published the following legislative proposals to further amend the CRD in July 2009: (a) Setting higher and reinforced capital requirements for certain assets that banks hold in the trading book and for re-securitization instruments; (b) Enhancing disclosure requirements in several areas such as securitization exposures in the trading book and sponsorship of off-balance sheet vehicles; and (c) Introducing a requirement that the remuneration policies of financial institutions be subject to supervisory oversight. It imposes a binding obligation on credit institutions and investment firms to have remuneration policies and practices that are consistent with and promote sound and effective risk management. It also ensures that supervisors may also impose penalties, including fines, against firms that fail to comply with the obligation. More information on regulatory proposals on this topic is set out in the Remuneration section.	The European Parliament is expected to hold a first reading on CRD III in June 2010. The indicative date for adoption is September 20, 2010. The draft Rapporteur's report, dated March 4, 2010, shows that 70 amendments to the proposed legislation have been put forward. The European Central Bank issued its opinion on the proposed legislation in November 2009, which recommends a number of amendments to the European Council.	The proposed legislation states that the amendments would apply from December 31, 2010. This date will depend on when the legislation is formally adopted. Adoption can only occur when agreement is reached between the European Parliament and the European Council on the content of the legislation.
CRD IV The Commission published consultation papers in July 2009 and February 2010. The Commission intends to deal with the proposals in both the papers in one legislative proposal and therefore these are dealt with together under the heading of CRD IV. The proposals relate to: (a) Through-the-cycle expected loss provisioning (capital buffer); (b) Specific incremental capital requirements for residential mortgages denominated in a foreign currency; (c) The removal of national options and discretions; (d) Liquidity standards – two regulatory standards are proposed, the Liquidity Coverage Requirement for short-term resilience to acute stress scenarios and the Net Stable Funding Requirement for long-term resilience to an extended firm-specific stress scenario. See the section on Liquidity below for further details on proposed liquidity standards; (e) Definition of capital - including a revision of the capital structure in line with the Basel proposals, amending the definition of Core Tier 1 Capital to only comprise common equity, strengthening the criteria for hybrid instruments and consideration of additional triggers for contingent capital; (f) Leverage ratio – a ratio which is non-risk based, based on going concern regulatory capital, incorporates an institution's on and off-balance sheet assets and applies at the same level as minimum capital requirements (i.e., solo, consolidated and sub-consolidated levels)	The Commission intends to publish legislative proposals on some or all of the proposed amendments by mid-2010.	In its Work Programme for 2010, published on March 31, 2010, the European Commission indicated that this is one of the initiatives it is committed to adopt in 2010.

CAPITAL REQUIREMENTS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
is proposed. The ratio would be disclosed under Pillar 3 and would supplement, not replace, the current risk-based minimum capital ratio; (g) Counterparty credit risk – specific proposals are set out in line with the Commission's Communications on possible reforms for the OTC derivative markets; (h) Countercyclical measures (i.e., increase in times of economic expansion and decrease in times of economic contraction) – both through-the-cycle provisioning for expected losses and capital buffers are proposed. These proposals develop further those proposals in the July 2009 consultation and take into account work done at the international level in the interim period; (i) Single Rule Book – it is intended that a single rule book would ensure that same things are treated the same way so that a product, specific as it may be to a national market, is treated the same way whoever offers the product. The Commission is considering full harmonization in this regard; and (j) Systemically Important Financial Institutions – there are no proposals yet on this issue but the Commission intends to consider further the nature and potential effect of the likely measures available. More detail on this issue is set out in the Restructuring of Financial Institutions section above. The European Parliament has asked the European Commission to undertake an impact assessment of a global financial transaction tax in order that the European Union can agree a common position on the options available to ensure the financial sector makes a fair and substantial contribution towards paying for efforts related to stabilizing the banking system.		
UNITED KINGDOM		
FSA Consultation on Implementing CRD II and CRD III In December 2009 the FSA published a consultation on strengthening capital standards which consults on the changes that will result from CRD II and from the proposed amendments to CRD III even though the latter are not yet finalized.	The consultation period closed on March 10, 2010. The FSA intends to issue feedback and the final rules in Q3 2010.	The rules relating to CRD II must apply by January 1, 2011. The CRD III rules are also expected to apply from January 1, 2011.
HM Treasury Consultation on Implementing CRD II In December 2009 HM Treasury published a consultation on implementing the changes required by CRD II. The consultation deals with FSA duties relating to colleges of supervisors, own funds for groups and emergency action by the Bank of England.	The consultation closed on March 30, 2010. HM Treasury has indicated that transposition into UK law is likely to be by amendments to the Capital Requirements Regulation 2006 (S.I. 2006/3221).	
UNITED STATES		
The House of Representatives The House of Representatives passed H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009 (the "House Bill") on December 12, 2009. The House Bill contains various proposals related to capital requirements. Some key highlights include:	The House Bill was passed in December 2009.	The House Bill was passed. If and when a corresponding bill will be passed by the Senate is unknown.

CAPITAL REQUIREMENTS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
(a) Requires the U.S. federal banking agencies to seek to make bank capital requirements "counter-cyclical" (i.e., increase in times of economic expansion and decrease in times of economic contraction); (b) Tightens capital requirements for bank holding companies that wish to (i) make interstate bank acquisitions, and/or (ii) qualify to engage in the expanded financial activities permissible under the Gramm-Leach-Bliley Act; (c) Requires the Federal Reserve to impose "heightened" risk-based capital requirements on any financial institution deemed systemically-important (see the section on Restructuring of Financial Institutions above); (d) Authorizes the Federal Reserve to require any financial institution deemed systemically-important to maintain an amount of "contingent capital" (see the section on Restructuring of Financial Institutions above); and (e) Imposes minimum capital requirements on "swap dealers" and "major swap participants" (see OTC Derivatives Markets below).		
The Senate On March 15, 2010, U.S. Senate Banking Committee Chairman Christopher Dodd issued his proposed "Restoring American Financial Stability Act 2010" (the "Senate Bill") for U.S. Senate consideration. The Senate Bill was approved by the Senate Banking Committee on March 22, 2010 and introduced to the full Senate on April 15, 2010. The Senate Bill contains many of the provisions (or similar provisions) relating to capital requirements included in the House Bill (identified above). The Senate Bill, however, does not require U.S. federal banking agencies to adopt "counter-cyclical" capital requirements.	The Senate Bill was approved by the Senate Banking Committee in March 2010. The full Senate will debate and offer amendments to the Senate Bill. If the Senate passes a bill, then it would be considered by the House of Representatives to deal with differences from the House Bill or be sent to a conference of the House of Representatives and Senate for final resolution.	
INTERNATIONAL		
Basel on Strengthening Capital and Liquidity The Basel Committee on Banking Supervision published proposals to strengthen global capital and liquidity regulations in December 2009 for consultation. Key features of the proposals issued for consultation are: (a) The quality, consistency and transparency of the capital base will be raised; (b) Strengthening the capital requirements for counterparty credit risk exposures arising from derivatives, repos and securities financing activities; (c) The introduction of a leverage ratio as a supplementary measure to the Basel II risk-based framework with a view to migrating to a Pillar 1 treatment based on appropriate review and calibration. Details of the leverage ratio will be harmonized internationally, fully adjusting for any remaining differences in accounting; (d) The introduction of measures to promote the build up of capital buffers in good times that can be drawn on during periods of stress,	Comments on the consultation to strengthen global capital and liquidity regulations were due on April 16, 2010. An impact assessment of its proposed amendments to capital and liquidity standards will be carried out in the first half of 2010. The Basel Committee on Banking Supervision will review the regulatory minimum level of capital in the second half of 2010, taking into account the reforms proposed in December 2009.	Reviewed and amended capital requirement standards are aimed to be implemented by the end of 2012.

CAPITAL REQUIREMENTS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
including forward looking provisioning based on expected losses, which captures actual losses more transparently; and (e) Introduction of a global minimum liquidity standard for internationally active banks that includes a 30-day liquidity coverage ratio requirement underpinned by a longer-term structural liquidity ratio. A common set of monitoring metrics will also be included (complementary to the monitoring metrics issued in September 2008).		
Basel Consultation on Sound practices for Backtesting CCR Models On April 15, 2010 the Basel Committee on Banking Supervision published a consultation paper on backtesting counterparty credit risk ("CCR") models. The consultation paper proposes guidance on supervisory expectations on backtesting and recommendations on how firms can strengthen the backtesting of CCR exposures. The guidance is intended to reinforce and explain changes included in the consultation paper published in December 2009 on strengthening global capital and liquidity regulations.	Responses to the consultation on backtesting CCR models are due by May 31, 2010.	
Basel Market Risk Report The Basel Committee on Banking Supervision published the "Revisions to the Basel II Market Risk Framework" Report in July 2009 which amends the capital framework for market risk to incorporate some key risks. The main features of the amendments are: (a) The current value-at-risk based trading book framework is replaced with an incremental risk capital charge, which includes default risk as well as migration risk, for unsecuritized credit products; (b) For securities products, the capital charges of the banking book will apply with a limited exception for certain correlation trading activities, where banks may be allowed by their supervisor to calculate a comprehensive risk capital charge subject to strict qualitative minimum requirements as well as stress testing requirements; and (c) Banks are required to calculate a stressed value-at-risk taking into account a one-year observation period relating to significant losses, which must be calculated in addition to the value-at-risk based on the most recent one-year observation period.		Banks are expected to comply with the revised market risk requirements by December 31, 2010. This also applies to portfolios and products for which a bank has already received or applied for approval using internal models for the calculation of market risk capital or specific risk model recognition before the implementation of these changes.
Basel II Enhancements Report The Basel Committee on Banking Supervision published the "Enhancements to the Basel II Framework" Report in July 2009. The Report amends Pillar 1 (Minimum Capital Requirements) and Pillar 3 (Market Discipline) and provides supplemental guidance to Pillar 2 (Supervisory Review Process) as set out below: (a) Pillar 1 (Minimum Capital Requirements) – higher risk weights for resecuritization exposures are introduced to better reflect the risk inherent in these products and banks are also required to conduct more rigorous credit analyses of externally rated securitization exposures; (b) Pillar 2 (Supervisory Review Process) supplemental guidance addresses firm-wide governance and risk management, capturing the risk of off-balance sheet exposures and securitization activities, managing risk concentrations, providing incentives for banks to better manage risk and returns over the long term, and sound compensation practices; and	Banks and supervisors are expected to begin implementing the Pillar 2 guidance immediately.	The Pillar 1 capital requirements and Pillar 3 disclosures should be implemented no later than December 31, 2010.

CAPITAL REQUIREMENTS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
(c) Pillar 3 (Market Discipline) – strengthens requirements concerning securitization exposures in the trading book, sponsorship of off-balance sheet vehicles, resecuritization exposures, and pipeline and warehouse risks with regard to securitization exposures.		
IMF Proposals for Capital Charges for TCTF Financial Institutions On April 1, 2010 the IMF published a working paper entitled "Regulatory Capital Charges for Too-Connected-to-Fail-Institutions: A Practical Proposal". The paper proposes regulatory capital charges that are intended to encourage institutions that are perceived to be Too-Connected-to Fail ("TCTF") to consider ways of diversifying their corporate structures and economic exposures and minimize the number of counterparties relied upon. TCTF capital charges would be proportional to how interconnected an institution is within a financial system or to other systemic institutions. The TCTF relates the concept of incremental contribution to systemic risk to concepts such as Value-at-Risk and Expected Shortfall, and is therefore aligned with the spirit of Basel II which would facilitate the implementation of the TCTF capital charge by supervisory authorities. The IMF proposes to mitigate the element of procyclicality in TCTF capital charges by (i) using estimates of the probability of default conditional on the realization of extreme events, and (ii) implementing a prompt corrective action framework where different thresholds for the TCTF capital charges trigger potential remedial actions. TCTF capital charges would only be effective if regulatory practices were harmonized, particularly for the measurement of interconnectedness risk, across different jurisdictions. To avoid conflicts of interest, the calculation of charges could be performed by a neutral multilateral institution such as the Basel Committee or the IMF. The introduction of systemic risk-based surcharges is also discussed in the IMF's "Global Financial Stability Report", published in April 2010.		
IMF Interim Report on Additional Financial Sector Taxes On April 21, 2010 the IMF published an interim report in response to a request from the G20 leaders for the IMF to report by the June G20 meeting on the range of options countries have adopted, or are considering, as to how the financial sector could make a fair and substantial contribution toward paying fiscal support of the financial system. In addition to analyzing the various options, the interim report also proposes two forms of contribution by the financial sector: (a) A Financial Stability Contribution ("FSC"). The FSC would be a levy on all financial institutions to pay firstly, for the cost of fiscal support by any government to the financial sector, and secondly, for the availability of a credit line. The FSC would either accumulate to facilitate the resolution of weak financial institutions or be paid into general revenue. The levy rate would initially be a flat rate, but over time it would be adjusted to reflect the risk and contribution to systemic risk of institutions; and (b) A Financial Activities Tax which would be levied on the profits and remuneration of financial institutions and paid into general revenue.	The IMF intends to undertake further work on these proposals before it delivers its final proposals to the G20 prior to the June 2010 summit.	

LIQUIDITY

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
EUROPEAN UNION		
European Proposals on Regulatory Liquidity Standards The European Commission published a consultation paper in February 2010 on further amendments to the Capital Requirements Directive (comprising two directives: Directive 2006/48/EC and Directive 2006/49/EC). The proposals include the adoption of two regulatory liquidity standards: the Liquidity Coverage Requirement for short-term resilience to acute stress scenarios and the Net Stable Funding Requirement for long-term resilience to an extended firm-specific stress scenario. These are broadly the same as the Basel proposals (discussed below). See the section on Capital Requirements above for further detail on proposals on capital adequacy.	The European Commission intends to publish legislative proposals on some or all of the proposed amendments dealt with in its February 2010 consultation by mid-2010.	
CEBS Consultation on Liquidity Cost Allocation On March 10, 2010 the Committee of European Banking Supervisors ("CEBS") published a consultation paper on guidelines on liquidity cost allocation. The proposed guidelines would inform firms about the factors they should consider when creating or reviewing liquidity cost benefit allocation mechanisms. The proposals include approaches to liquidity costs based on direct funding costs and associated indirect costs.	The CEBS consultation on liquidity cost benefit allocation closes on June 10, 2010. A public hearing on the issues raised in its consultation will be held on June 1, 2010.	CEBS expects members to transpose the finalized guidelines into their national legal framework and apply them by March 30, 2011 at the latest.
CEBS Guidelines on Liquidity Buffers On December 9, 2009 CEBS published its guidelines on liquidity buffers. The guidelines set out: (a) That a liquidity buffer represents available liquidity, covering the additional need for liquidity that may arise over a defined short period of time under stress conditions; (b) The 3 types of stress scenarios that institutions should apply – idiosyncratic, market specific and a combination of the two; (c) That a survival period of at least one month should be applied to determine the overall size of the liquidity buffer; (d) That the liquidity buffer should be composed of cash and core assets that are both central bank eligible and highly liquid in private markets; (e) That institutions need to manage their liquid assets, ensuring that they would be available in times of stress; and (f) That the location and size of liquidity buffers within a banking group should adequately reflect the structure and activities of the group.	CEBS may revisit its guidelines on liquidity risk management and liquidity buffers as far as necessary following further development in this area.	CEBS expects members to ensure financial institutions apply the guidelines by June 2010.
UNITED KINGDOM		
FSA Liquidity Regime The UK has proceeded to implement a liquidity regime ahead of EU or international consensus being reached on the topic. The new rules affect all UK banks and building societies, branches of European Economic Area and other overseas firms operating in the UK, and investment firms and require changes to firms' business models. The FSA published a statement on March 8, 2010 confirming that it still	The FSA will review whether quantitative standards should be tightened again later in the year and make a further announcement in Q4 2010.	The liquidity regime came into effect on December 1, 2009, although some reporting requirements have been staggered and the transition dates for overseas firms is delayed until November 2010.

LIQUIDITY

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
considered that it was too early to tighten quantitative standards (liquidity buffers). These aspects of the regime will be phased over several stages over a period of several years. The main components of the regime are: (a) The overall liquidity adequacy rule: UK banks are required to maintain liquidity resources that are adequate in quantity and quality and which do not include resources that can be made available by other group members or made available through emergency assistance from a central bank; (b) Systems and controls requirements: firms are subject to liquidity risk management, stress testing and contingency funding plan requirements in order to identify, measure, manage and monitor their liquidity risks; (c) Individual liquidity adequacy standards: once the FSA has completed its Supervisory Liquidity Review Process it will provide each firm with an individual liquidity guide containing guidance about the quantity of a firm's liquid asset buffer and the firm's funding profile. Each firm will have to monitor its compliance with the liquidity guidance on a daily basis; (d) Composition of the liquid assets buffer: a firm's buffer must consist of a stock of high-quality government bonds, central bank reserves and bonds issued by multilateral development banks; and (e) Cross-border and intra-group management of liquidity: firms with UK branches may apply for a whole-firm liquidity modification to modify the requirement for the branch to be self-sufficient, provided certain conditions are met. UK entities may apply for an intra-group liquidity modification based on the parent undertaking's liquidity resources.	The FSA has requested information from firms on their compliance with the new rules and arrangements for ensuring compliance with the electronic reporting of liquidity data from the relevant date. The FSA will follow up with firms providing insufficient information. A report on the FSA's findings will be published in Q3 2010. The FSA has assured firms that the UK regime will be developed as appropriate as international rules are agreed.	
UNITED STATES		
The House of Representatives The House of Representatives passed H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009 (the "House Bill") on December 12, 2009. The House Bill requires the Federal Reserve to apply "heightened" liquidity requirements on any financial institution deemed systemically-important. The specific requirements are to be determined by regulation.	The House Bill was passed in December 2009.	The House Bill was passed. If and when a corresponding bill will be passed by the Senate is unknown.
The Senate On March 15, 2010, U.S. Senate Banking Committee Chairman Christopher Dodd issued his proposed "Restoring American Financial Stability Act 2010" (the "Senate Bill") for U.S. Senate consideration. The Senate Bill was approved by the Senate Banking Committee on March 22, 2010 and introduced to the full Senate on April 15, 2010. Like the House Bill, the Senate Bill requires the Federal Reserve to apply "heightened" liquidity requirements on systemically important financial institutions. The specific requirements are to be determined by regulation.	The Senate Bill was approved by the Senate Banking Committee in March 2010. The full Senate will debate and offer amendments to the Senate Bill. If the Senate passes a bill, then it would be considered by the House of Representatives to deal with differences from the House Bill or be sent to a conference of the House of Representatives and Senate for final resolution.	

LIQUIDITY

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
U.S. Federal Banking Agency Guidance On March 17, 2010, the U.S. federal banking agencies issued guidance on liquidity risk management. The guidance summarizes the principles of sound liquidity risk management that the agencies have previously issued and aligns such guidance with the "Principles for Sound Liquidity Risk Management and Supervision" issued by the Basel Committee on Banking Supervision in September 2008 (described in greater detail below). The guidance emphasizes the importance of cash flow projections, diversified funding sources, stress testing, maintaining a cushion of liquid assets, and a formal well-developed contingency funding plan, as primary tools for measuring and managing liquidity risks.	No further steps are expected in the near future.	
INTERNATIONAL		
Basel Principles for Sound Liquidity Risk Management and Supervision The Basel Committee on Banking Supervision issued its Principles for Sound Liquidity Risk Management and Supervision ("Principles") in September 2008. The Principles update the Basel 2000 Sound Practices for Managing Liquidity in Banking Organizations. Although the Principles focus on medium to large complex banks, there is broad applicability to all banks. Banks and national supervisors were expected to implement the Principles promptly and thoroughly. The Principles relate to board and senior management oversight, the establishment of policies and risk tolerance, the use of liquidity risk management tools such as comprehensive cash flow, forecasting, limits and liquidity scenario stress testing, the development of contingency funding plans and the maintenance of a sufficient cushion of high quality liquid assets to meet contingent liquidity needs. On December 17, 2009 the Basel Committee on Banking Supervision launched a consultation on two regulatory standards for liquidity risk and a set of common monitoring tools to be used by supervisors. In particular, the proposals are: (a) The introduction of a liquidity coverage ratio which identifies the amount of unencumbered, high quality liquid assets an institution holds that can be used to offset the net cash outflows it would encounter under an acute short-term stress scenario specified by supervisors; (b) The introduction of a Net Stable Funding Ratio which would measure the amount of longer-term, stable sources of funding used by a firm relative to the liquidity profiles of the assets funded and the potential for contingent calls on funding liquidity arising from off-balance sheet commitments and obligations; (c) That the standards would establish minimum levels of liquidity for internationally active banks and national supervisors would be free to adopt higher levels of minimum liquidity; and (d) The introduction of a set of common metrics to be considered as the minimum types of information which supervisors should use in monitoring liquidity of firms and including contractual maturity mismatch, concentration of funding, available unencumbered assets and market-related monitoring tools.	The consultation on liquidity risk standards and monitoring tools closed on April 16, 2010. The Basel Committee on Banking Supervision has confirmed that an impact assessment of its proposed amendments to capital and liquidity standards will be carried out in the first half of 2010.	

CORPORATE GOVERNANCE

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
EUROPEAN UNION		
European Corporate Governance Forum The European Corporate Governance Forum (the "Forum"), which was originally set up in 2004 had its mandate renewed in 2008. The work program of the Forum includes consideration of issues such as empty voting and transparency of investors' positions, cross-border voting and rules on acting in concert in relation to corporates. In its Communication "Driving European Recovery" of March 4, 2009, the European Commission made a commitment to produce a report on corporate governance practices in financial institutions. The Forum is involved in the Commission's work in this area.	Following a study of a selection of financial institutions, the European Commission indicated that it will probably publish a report by the end of Q1 2010.	
CEBS Principles for Risk Management On February 16, 2010 the Committee of European Banking Supervisors ("CEBS") published its new high-level principles for risk management for institutions and supervisors. The guidelines are aimed mainly at large and complex financial institutions. However, they could be adapted to any institution providing its size, nature and complexity are taken into account. The guidelines include governance and risk culture, risk appetite and tolerance, the role of the chief risk officer and risk management functions and risk models and the integration of risk management areas.	Member States will need to ensure that the risk management principles are implemented appropriately.	CEBS expects its members to implement the high-level risk management principles into their procedures by December 31, 2010.
UNITED KINGDOM		
The Walker Review The UK Government called for a review of corporate governance in banks following the financial crisis. The final Walker recommendations were published in November 2009. The actions taken by the FSA and the Financial Reporting Council's (the "FRC'"), described below, are a result of those recommendations.		
FSA Consultation The FSA published a consultation paper in January 2010 which sets out its latest initiatives to improve the quality of corporate governance in financial institutions and to increase the intensity of its supervisory approach to this issue. The following are the key FSA proposals: (a) A new framework of classification of significant influence functions. The FSA proposes to introduce nine new significant influence functions (comprising six new governing functions and three new systems and controls functions) in order to segregate the key roles within governance structures. Under the current regime, a person approved for one significant influence function may perform a role falling within another significant influence function without further vetting from the FSA. The FSA now consider that an individual should be assessed for each of the separate roles he may undertake within a firm that have a significant influence on that firm; (b) Changes to the approved persons regime. The consultation paper sets out proposals on the approved persons regime that build on previous changes implemented by the FSA, including extending the regime to capture more individuals who are based outside a UK-	Responses to the FSA consultation are due by the end of April 2010.	

CORPORATE GOVERNANCE

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
regulated firm but who exert a significant influence upon that UK-regulated firm; (c) New guidance on the FSA's expectations in relation to non-executive directors ("NEDs"). The FSA's key message remains that NEDs have a pivotal role to play in the active governance of firms. Where it appears that an executive has persistently made poor decisions, the FSA will look closely at a NEDs' performance if it feels that the NED has not intervened in a timely and sufficient way. The FSA proposes to delete current guidance in the FSA Handbook that discusses the limits of NED liability because the FSA is concerned that the existing guidance in the FSA Handbook could be misinterpreted to mean that the FSA would not hold NEDs responsible for, for example, failing to intervene and challenge the executive. The FSA sees challenge and intervention as a key part of any NED's responsibilities. The FSA also intends to make it clear that in assessing individuals for NED roles, it will assess an individual's capability with regard to the extent to which they are able to meet the level of time commitment specified by the firm in its contract terms of appointment for the role; (d) New guidance for firms, particularly FTSE 100-listed banks and insurers, to consider establishing risk management committees; (e) New guidance for firms on the appointment of a chief risk officer who will be responsible for ensuring the board receives balanced and accessible information and advice on high-level risk issues; and (f) In line with the FRC's developments on the Stewardship Code, the FSA will consult on a new disclosure rule whereby firms will be required to publicly disclose the extent to which they comply with the Stewardship Code.		
UK Corporate Governance Code The FRC is the UK's regulator responsible for promoting confidence in corporate governance and reporting. The FRC publishes and keeps under review a code of recommended corporate governance containing main and supporting principles and more detailed best practice provisions (currently called the Combined Code and to be renamed the UK Code on Corporate Governance) ("the Code"). In its December 2009 final report on proposed revisions to the Code, the FRC said that it would only be adopting those recommendations of the Walker Review that it considered appropriate to all listed companies but not including any sector specific provisions in the revisions in the revised Code. It is not therefore, for example, proposing to include in the Code any of the specific time commitment recommendations that the Walker Review made for chairmen and NEDs on the boards of certain banks or other financial institutions. The FRC will implement these and other recommendations through (A) revisions to the Code which is the governance standard for UK listed companies (and, from April 6, 2010, non-UK companies with premium listings), (B) revisions to its other associated corporate governance guidance (see the Turnbull and Higgs Guidance mentioned below), and (C) the development of a Stewardship Code for institutional investors (as recommended by the Walker Review). (A) The following are the main proposed amendments to the Code: (a) Changes in the layout of the Code, particularly to reflect the importance of an effective board, the leadership responsibilities of the chairman and removing the section addressed to institutional shareholders; it is proposed that this section will be replaced by the new Stewardship Code, about which, see below. Some supporting principles (i.e., the time commitment required from directors) are to be given	The FRC expects to publish a final revised Code in May 2010 which will apply to financial years beginning on or after June 29, 2010. The Higgs Guidance consultation will end in April, a further consultation draft will be issued in June and the final updated Guidance will be submitted to the FRC in October 2010. The outcome of the consultation on the Stewardship Code is expected to be announced in May/June 2010.	

CORPORATE GOVERNANCE

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
greater prominence and importance by being recast as Main Principles. (b) Changes to the Main Principles (and some supporting principles) relating to the leading role required of the Chairman, the requirement that NEDs should constructively challenge and help develop strategy proposals, the time requirement expected of directors, a requirement that the board should have an appropriate balance of skills, experience, independence and knowledge of the company to enable it to discharge its duties effectively, the need for directors to have appropriate knowledge of the company and access to its operations and staff, a requirement that the performance-related elements of executive directors' remuneration should be stretching and geared to the long term success of the company and the board's responsibility for setting and overseeing risk management and setting risk appetite and tolerance. (c) New Code provisions which (as with all relevant provisions of the Code) will be subject to the "comply or explain" requirement of the FSA's Listing Rules and which include a proposal that either the chairman and/or the entire board should be subject to annual re-election, requiring the board to satisfy itself that there are appropriate systems to identify, evaluate and manage risks, the inclusion in the annual report of an explanation of the company's business model and overall financial strategy, a requirement that evaluation of the performance of the board should be externally facilitated at least every three years and personalized training and development approaches for each director. (B) Some of the Walker Recommendations may be implemented through revisions to the Turnbull Guidance on internal control (on which the FRC has said it will be consulting later this year) and to the Higgs Guidance (on the role of chairmen, NEDs and board committees). A consultation, "Improving Board Effectiveness", launched in early March 2010 focuses on practical guidance to boards on applying the Code so as to enhance their effectiveness. (C) The Walker Review recommended that the FRC should adopt and assume responsibility for the Code on Responsibilities of Institutional Investors prepared by the Institutional Shareholders' Committee, renaming it the Stewardship Code. The FRC is currently consulting on whether this Code should be adopted in its current form or amended, on which institutional investors and agents should be encouraged to apply the code on a "comply or explain" basis, on disclosure requirements and on monitoring arrangements.		
UNITED STATES		
SEC Disclosure Enhancements In December 2009, the SEC adopted disclosure enhancements with respect to the corporate governance policies, procedures and practices of U.S. public companies. These rules require additional public disclosures relating to: (a) Risk management policies and procedures, including the role of the board in overseeing and monitoring risk; (b) Company leadership structure; (c) Director nomination processes and how the company's nominating committee considers diversity;		The new SEC rules on disclosure enhancement are effective as of February 28, 2010 with compliance required for companies with fiscal years ending on or after December 20, 2009 for Forms 10-K and proxy statements filed on or after February 28, 2010.

CORPORATE GOVERNANCE

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
(d) Director qualifications and skills; and (e) Compensation consulting.		
The House of Representatives The House of Representatives passed H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009 (the "House Bill") on December 12, 2009. The House Bill gives the SEC authority to issue regulations that would require inclusion of shareholder nominees for the board in a public company's proxy statement. The House Bill also requires public companies to have a compensation committee composed of independent directors (see "Remuneration" below).	The House Bill was passed in December 2009.	The House Bill was passed. If and when a corresponding bill will be passed by the Senate is unknown.
The Senate On March 15, 2010, U.S. Senate Banking Committee Chairman Christopher Dodd issued his proposed "Restoring American Financial Stability Act 2010" (the "Senate Bill") for U.S. Senate consideration. The Senate Bill was approved by the Senate Banking Committee on March 22, 2010 and introduced to the full Senate on April 15, 2010. The Senate Bill includes the House Bill proposals summarized above and also includes requirements that public companies make certain disclosures regarding their leadership (Chairman and CEO) structures and a requirement that public companies employ certain majority voting standards in uncontested elections for board membership.	The Senate Bill was approved by the Senate Banking Committee in March 2010. The full Senate will debate and offer amendments to the Senate Bill. If the Senate passes a bill, then it would be considered by the House of Representatives to deal with differences from the House Bill or be sent to a conference of the House of Representatives and Senate for final resolution.	
INTERNATIONAL		
Basel Consultation on Principles for Enhancing Corporate Governance On March 16, 2010 the Basel Committee on Banking Supervision issued a consultation document, entitled "Principles for Enhancing Corporate Governance", on proposals for updating its principles on corporate governance, last updated in 2006. The proposals include the following principles: (a) The board should have overall responsibility for the bank, including approving and overseeing the implementation of the bank's objectives, risk strategy, corporate governance and corporate values. The board is also responsible for providing oversight of senior management; (b) Board members should be and remain qualified through training for their positions. Board members should understand their role in corporate governance; (c) The board should define appropriate governance practices for its own work and have in place the means to ensure such practices are followed and periodically reviewed for improvement, including organizational rules;	Responses to the consultation are due by June 15, 2010.	

CORPORATE GOVERNANCE

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
(d) The board of a parent company has the overall responsibility for adequate corporate governance across the group and for ensuring that there are governance policies and mechanisms appropriate to the structure, business and risks of the group and its entities; (e) Senior management should ensure that the bank's activities are consistent with the business strategy, risk tolerance and policies approved by the board; (f) Banks should have an independent risk management function with sufficient authority, stature, independence, resources and access to the board which includes a chief risk officer; (g) Risks should be identified and monitored on an ongoing firm-wide and individual entity basis; (h) There should be robust internal communication within the bank about risk, both across the organization and by reporting to the board and senior management; (i) The work by internal audit functions, external auditors and internal control functions should be effectively used by the board and senior management; (j) The board should oversee the compensation system's design and operation and review and monitor the system; (k) An employee's compensation should be effectively aligned with prudent risk taking (see the Remuneration section for more detail); (l) The board and senior management should know and understand the bank's operational structure and the risks that it poses; (m) Where a bank operates through special-purpose or related structures or in jurisdictions that impede transparency or not meet international banking standards, its board and senior management should understand the purpose, structure and unique risks of such operations and seek to mitigate the risks identified; and (n) Governance should be adequately transparent to a bank's shareholders, depositors, other relevant stakeholders and market participants. The consultation also deals with the role of supervisors and states that supervisors should: (a) Provide guidance on expectations for sound governance; (b) Regularly perform comprehensive evaluations of overall corporate governance policies and practices; (c) Supplement the above evaluation by monitoring a combination of internal and prudential reports; (d) Require banks to take remedial action to address material deficiencies in its policies and practices; and (e) Cooperate with other relevant supervisors including through supervisory colleges, periodic meetings and memorandums of understanding.		

CORPORATE GOVERNANCE

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
OECD Good Practices to Enhance Implementation of the Corporate Governance Principles On February 24, 2010 the Organization for Economic Cooperation and Development published a paper entitled "Conclusions and Emerging Good Practices to Enhance Implementation of the Principles". The paper is a result of the OECD's view that its Principles of Corporate Governance provide a good basis but there is an urgent need to encourage and support the implementation of agreed international and national standards. The conclusions and emerging good practices relate to remuneration, improving risk management and disclosures about risks and risk management, improving board practices and duties of the board and the interaction between shareholders and companies.		

REMUNERATION

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
EUROPEAN UNION		
European Legislative Proposals In July 2009 the European Commission published a legislative proposal to further amend the Capital Requirements Directive (comprising two directives: Directive 2006/48/EC and Directive 2006/49/EC). The legislative proposal is referred to as CRD III in this note. Further details on the proposals on Capital Requirements can be found in that section of this note. In April 2009 the Commission adopted two recommendations: (i) on remuneration of risk-taking staff in financial institutions, and (ii) on the structure and determination of directors' remuneration. The proposals in CRD III are intended to complement those recommendations. The Commission's recommendations on remuneration would apply to EU authorized credit institutions and investment firms but would only cover staff whose activities have a material impact on the risk profile of their employer financial institution. The proposals in CRD III: (a) Require credit institutions and investment firms to have remuneration policies and practices which are consistent with and promote sound and effective risk management and which are in the long-term interests of the financial institution; (b) Require firms to review their remuneration policies at least annually; (c) Require the fixed and variable components of remuneration to be appropriately balanced; (d) Require payments related to the early termination of a contract to reflect performance over time and not to be designed in a way that rewards failure; (e) Require the measurement of performance used to calculate bonuses to include an adjustment for risks and the cost of capital and liquidity requirements; (f) Require deferral of bonuses; (g) Bring remuneration policies within the scope of supervisory review so that supervisors identifying problems in remuneration policies could require the firm to amend its remuneration structure or require the firm to hold additional own funds against the risk posed by its remuneration structure; and (h) Allow supervisors to impose financial or non-financial penalties on non-complying firms. In addition, the Committee of European Banking Supervision ("CEBS") High Level Principles for Remuneration Policies, which were required to be implemented by Q3 2009, will also be taken into account when a firm's remuneration policies are being assessed. On April 6, 2010 the European Parliament published a draft report on the recommendations and proposals on remuneration put forward by the European Commission on remuneration of directors of listed companies and remuneration policies in the financial services sector. The European Parliament supports the proposals and requests the European Commission to adopt strong binding principles on remuneration policies in the financial sector, including a naming and shaming procedure for listed companies that do not comply with the principles, to carry out an impact assessment on the feasibility of instituting a European bonus tax and to set up an insurance system fed by	The European Parliament is expected to hold a first reading on CRD III in June 2010. The indicative date for adoption is September 20, 2010. The draft Rapporteur's report on CRD III, dated March 4, 2010, shows that 70 amendments to the proposed legislation have been put forward. The European Central Bank issued its opinion on the proposed legislation in November 2009, which recommends a number of amendments to the European Council, including on remuneration issues.	If enacted, the amendments would apply from December 31, 2010.

REMUNERATION

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
contributions from financial institutions in order to avoid a new financial crisis.		
UNITED KINGDOM		
Financial Services Act 2010 The Financial Services Act 2010 (the "FS Act 2010") was passed on April 8, 2010 and provides HM Treasury with the power to lay regulations in relation to the preparation, approval and disclosure of executives' remuneration reports. Such remuneration reports will detail the remuneration and "anything connected with the remuneration" of certain officers, employees and "other individuals" (which is wide enough to encompass third party contractors and employees of group companies). The FS Act 2010 extends the company law disclosure regime, under which companies disclose details of directors' remuneration, stipulating that the regulations make provision for the filing of executives' remuneration reports with the registrar for companies or with the FSA and for the publication by the FSA of reports filed with it. Furthermore, the FS Act 2010 requires the FSA to make general rules requiring authorized persons to have to act in accordance with a remuneration policy. Such policies must be consistent with (i) the effective management of risks; and (ii) the Financial Stability Board's (the "FSB") Principles for Sound Compensation Practices (the "FSB Principles") and Implementation Standards (the "FSB Implementation Standards") (further detail on the FSB measures is set out below). HM Treasury may direct the FSA to consider whether such policies comply with the requirements imposed by the FSA's rules, as to the contents of the remuneration policies, and the FSA must take such "steps as it considers appropriate" to deal with any policies that fail to comply with such requirements. For example, the FS Act 2010 provides that firms would not be able to remunerate by certain methods, that any agreement in contravention would be rendered void and that all payments made or property transferred in contravention could be recovered. However, remuneration provisions in place before the FSA's rules are made may not be rendered void under the FSA 2010, unless such provisions are subsequently amended in contravention of the FS Act 2010 provisions.	The FS Act 2010 clearly states that where a provision of a remuneration policy contravenes the FSA's remuneration rules, the FSA can find that such a provision is void and require the recovery of any remuneration payment made or property transferred. However, the provisions of the FS Act 2010 do not discuss, where a particular provision is rendered void, the process by which the contracting parties may appeal such a decision. Therefore, it is likely that firms will call for further guidance as remuneration policies and reports are prepared in accordance with the FS Act 2010.	
HM Treasury Draft Regulations On March 10, 2010, HM Treasury published a draft of the Executives' Remuneration Reports Remuneration 2010 Regulations. As discussed above, the FS Act 2010 provides HM Treasury with a power to lay regulations in relation to the preparation, approval and disclosure of executives' remuneration reports. The draft regulations require: (a) Disclosure of executives whose remuneration in the preceding financial year exceeded £500,000 (the corresponding threshold is £1 million in the Walker Review); (b) Narrow disclosure bands which start from £500,000 and increase in £500,000 increments to £5 million; and (c) That executives' remuneration reports include information on the aggregate amounts earned by executives with regard to their basic salaries, expense allowances, bonuses and other benefits.	The draft regulations are in the process of undergoing a full public consultation, in light of the FS Act 2010 being enacted by Parliament.	The disclosure regime is intended to come into force for annual reports in respect of 2010 issued in early 2011.

REMUNERATION

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
Furthermore, in addition to setting out the duty to prepare executives' remuneration reports, draft Regulation 5 stipulates that criminal sanctions may be imposed upon breach of such duty. Draft Regulation 6 and the Schedule to the draft regulations set out the information which must be included in such a remuneration report, and under paragraph 2 of the Schedule, the report must contain a statement of the banking institutions' policy on executives' remuneration (including an explanation of any performance conditions attached to the executives' remuneration) and a full explanation of how the institution's policy takes account of the risks to which it is subject.		
FSA Remuneration Code The FSA's Remuneration Code ("Remuneration Code") came into force on January 1, 2010 for large banks, building societies and broker dealers and applies to any remuneration awards made by such firms for the 2009 performance year. Under the Remuneration Code such firms must establish remuneration policies and procedures that are "consistent with and promote effective risk management". Currently, the Remuneration Code does not apply to firms outside of the top 26 financial institutions in the UK.	The transitional arrangements, within the Remuneration Code, for firms required to self-amend employment contracts, ended on March 31, 2010. However, firms required to terminate employment contracts have until December 31, 2010 to comply with their transitional arrangements.	The FSA plans to publish a statement during the third quarter of 2010, which will assess the effectiveness of the Remuneration Code and provide an update on international implementation of remuneration policies. The timing of this statement will take into account discussions at an EU level.
Bank Payroll Tax The 2009 pre-budget report announced a "one-off" 50 percent tax levied on any variable remuneration awarded in excess of £25,000 for the period December 9, 2009 to April 5, 2010 (the "Bank Payroll Tax" or "BPT"). The BPT applies to banks, building societies and certain other financial sector firms that pay variable remuneration (i.e., bonuses) comprising money or money's worth, including shares, benefits and loans. However, on March 12, 2010, HM Revenue & Customs announced that financial institutions that are not deposit takers and that have a capital resources requirement ("CRR") of less than £100 million (and which do not belong to a group where the aggregate CRR is £100 million or more), will be excluded from the scope of the BPT. The BPT is levied on all UK-resident banks and UK branches of foreign banks and such banks will be charged on the aggregate amount of "chargeable relevant remuneration" paid to their "relevant banking employees", i.e., persons who provide banking services and whose duties relate to activities that are regulated activities. Such remuneration excludes banking employees' regular salaries and benefits and any fixed remuneration to be provided under a contractual obligation that arose before December 9, 2009. However, spread betting companies and commodities traders outside banking groups will be added to the list of firms excluded from the definition of banks that are subject to the BPT.	The BPT will continue to operate until April 5, 2010 and all payments will become due as at August 31, 2010. All "taxable companies" will be required to keep full records of all "relevant remuneration" payments in excess of £25,000 that are awarded during the chargeable period.	
Walker Review The final Walker recommendations were published in November 2009 which included recommendations on remuneration. In essence the Walker Review concluded that substantial enhancement is needed of board-level oversight of remuneration policies. The main Walker Review recommendations are:		The Walker Review recommendations will apply at the earliest for remuneration payable in 2011, based on employees' 2010 performances.

REMUNERATION

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
(a) To extend the remit of remuneration committees beyond board members to cover all executives for whom total remuneration exceeds that of executive board members; (b) To extend remuneration committees' reports to disclose information on high-end executives' remuneration and their pay bands; (c) That at least half of variable remuneration should be performance related and in the form of long-term incentives; half of which shall become payable after three years, with the remainder payable after five years; (d) That short-term bonuses should be paid over a three year period, with not more than one-third in the first year; (e) That Remuneration Committees should liaise with board-risk committees to perform risk assessment of remuneration policies; (f) That executives should be expected to maintain a shareholding or a vested award at least equal to their standard remuneration; (g) Not to disclose individual executive remuneration but rather disclose the total number of high-end employees (as per the Remuneration Code's definition of individuals who perform a significant influence function at a company) who fall into specific pay bands of £1 to £2.5 million, £2.5 to £5 million and then £5 million bands thereafter; and (h) That remuneration committee responsibilities should be extended to company-wide compensation policies and their remit shall include high-end employees in addition to directors.		
UNITED STATES		
The Corporate and Financial Institution Compensation Fairness Act of 2009 The Corporate and Financial Institution Compensation Fairness Act of 2009 (the "Fairness Act") was introduced by Representative Barney Frank on July 17, 2009 and passed by the U.S. House of Representatives on July 31, 2009. The Fairness Act was subsequently incorporated, along with a number of other bills, into H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009 (the "House Bill"). The House Bill includes the following compensation related provisions: (a) An annual nonbinding shareholder vote to approve the compensation of the named executive officers disclosed in the annual proxy statement; (b) A nonbinding vote approving agreements or understandings that provide for compensation to be paid to any named executive officers that is based on or otherwise relates to a corporate transaction (i.e., "golden parachutes") as disclosed in proxy solicitation materials relating to the applicable corporate transaction; (c) Each member of the compensation committee of a board of directors should be independent from the issuer. In order to be independent, the member of the committee must not receive any consulting, advisory or other compensatory fee from the issuer (other than in his capacity as a member of the board of directors); (d) Any compensation consultant or similar adviser to the compensation committee of any issuer must meet independence standards set	The House Bill was passed in December 2009.	The House Bill was passed. If and when a corresponding bill will be passed by the Senate is unknown.

REMUNERATION

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
forth by the U.S. Securities and Exchange Commission. Compensation committees should have the authority and the necessary funding to retain and obtain the advice of independent compensation consultants, independent counsel and other independent advisers; (e) Certain financial institutions will be required to disclose to the appropriate federal regulator the structure of all incentive-based compensation arrangements and provide sufficient information to determine whether the compensation arrangement is aligned with sound risk management, structured to account for the time horizon of risks, and meets other criteria set forth by regulators to reduce unreasonable incentives for employees to take undue risk; (f) The appropriate federal regulators will prohibit any incentive-based compensation arrangements that encourage inappropriate risk that could threaten the safety and soundness of the financial institution or have serious adverse effects on economic conditions or financial stability; (g) The Comptroller General of the United States will carry out a study to determine whether there is a correlation between the compensation structures and excessive risk taking; and (h) A limit on compensation paid to senior executive officers of financial holding companies that are subject to stricter prudential standards in order to mitigate risk to financial stability and the economy (see the section on Restructuring of Financial Institutions above). The limits on compensation include a ban on bonuses and on increases in base compensation, unless a bonus or an increase in base compensation is approved by the Board of Governors of the Federal Reserve System.		
The Senate On March 15, 2010, U.S. Senate Banking Committee Chairman Christopher Dodd issued his proposed "Restoring American Financial Stability Act 2010" (the "Senate Bill") for U.S. Senate consideration. The Senate Bill was approved by the Senate Banking Committee on March 22, 2010 and introduced to the full Senate on April 15, 2010. Many of the compensation related provisions in the Senate Bill were also included in the House Bill. The following compensation related provisions from the Senate Bill were not addressed by the House Bill: (a) Mandatory disclosure in the issuer's annual proxy statement showing the relationship between executive compensation and the performance of the issuer, taking into account any change in the value of shares of stock and dividends of the issuer; (b) Introduction of a 'clawback' policy that, in the event of an accounting restatement, allows the issuer to recover compensation from any current or former executive officer who received excess incentive-based compensation as a result of erroneous financial data during the three-year period preceding the date that the issuer is required to prepare an accounting restatement; (c) Mandatory disclosure in the issuer's annual proxy statement relating to whether employees or directors of the issuer are permitted to purchase financial instruments designed to hedge or offset any decrease in the market value of equity securities granted to employees or directors of the issuer as compensation; (d) Mandatory disclosure in the issuer's annual proxy statement of the (i) median of the annual total compensation of all employees (except the chief executive officer) of the issuer, (ii) annual total compensation of the chief executive officer, and (iii) ratio of the amount	The Senate Bill was approved by the Senate Banking Committee in March 2010. The full Senate will debate and offer amendments to the Senate Bill. If the Senate passes a bill, then it would be considered by the House of Representatives to deal with differences from the House Bill or be sent to a conference of the House of Representatives and Senate for final resolution.	

REMUNERATION

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
described in (i) to the amount described in (ii); (e) Only votes cast by beneficial owners of a security or by members given specific voting instructions by the beneficial owner to vote the proxy will be included in the vote tally for advisory shareholder votes on executive compensation (annual advisory votes on executive compensation are proposed in both the House Bill and the Senate Bill); and (f) The Board of Governors will establish standards prohibiting as an unsafe and unsound practice any compensation plan of a bank holding company that (i) provides for excessive compensation or (ii) could lead to material financial loss to the company.		
FDIC On January 12, 2010, the Federal Deposit Insurance Corporation ("FDIC") Board of Directors issued an advance notice of proposed rulemaking seeking comment on how the FDIC's risk-based insurance assessment system could be changed. In the advance notice, the FDIC explores how to incorporate compensation criteria into its risk-based assessment system. The FDIC proposed the following compensation related features in the advance notice: (a) A significant portion of compensation for employees whose business activities may present greater risk to the institution should be comprised of restricted, non-discounted company stock; (b) Significant awards of company stock should only become vested over a multi-year period and be subject to a look-back (i.e., clawback) in order to address the outcome of risks assumed in an earlier period; (c) The compensation program should be administered by a committee of the board of directors composed of independent directors with input from independent advisers; and (d) If the FDIC determines that the compensation program creates additional risk for the company, the risk-based deposit insurance rates for that company would increase to adequately compensate the Deposit Insurance Fund for the risks inherent in the design of certain compensation programs. The advanced notice also requested comments based on 15 questions relating to features of compensation programs that would meet the FDIC's goals. The questions set forth by the FDIC generally address how to best implement a risk-based assessment scheme for executive compensation.	Comments on the advance notice of proposed rulemaking were due on February 18, 2010. The FDIC is currently reviewing the comments and will determine the scope of the final rule, if any.	There is no clear timeline on a final rule.
Federal Reserve On October 22, 2009 the Board of Governors of the Federal Reserve ("Federal Reserve") proposed two supervisory initiatives designed to ensure that banking organizations do not encourage excessive risk-taking through incentive compensation policies. The two supervisory initiatives are a (i) horizontal review of the incentive compensation policies and practices of twenty-eight (28) of the largest and most complex U.S. banking organizations and (ii) review of compensation practices at regional, community and other banking organizations regulated by the Federal Reserve. Each of these supervisory initiatives will be guided by the following three principles:	Immediately following the release of the supervisory initiatives, banking organizations supervised by the Federal Reserve reviewed the incentive compensation arrangements of: (1) senior executive officers and others responsible for oversight of firm-wide activities or material business lines;	Banking organizations supervised by the Federal Reserve are currently participating in the supervisory initiatives.

REMUNERATION

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
(a) Incentive compensation arrangements should balance risk and financial results in a manner that does not provide employees incentives to take excessive risks on behalf of the banking organization; (b) A banking organization's risk management process and internal controls should reinforce and support the development of balanced incentive compensation arrangements; and (c) Banking organizations should have strong and effective corporate governance, including active oversight by the organization's board of directors to help ensure sound compensation policies.	(2) individual employees, including non-executive employees, whose activities expose the firm to material risk; and (3) groups of employees who are subject to the same or similar incentive compensation arrangements and who, in the aggregate, may expose the firm to material amounts of risk (even if no individual employee is likely to expose the firm to material risk).	
INTERNATIONAL		
Basel Compensation Principles and Standards Assessment Methodology On January 22, 2010 the Basel Committee on Banking Supervision issued its "Compensation Principles and Standards Assessment Methodology" (the "Methodology"). This Methodology aims to help supervisors assess significant financial firms' (particularly large, systemically important firms, though national supervisors may choose to extend the application to a wider range of financial institutions) compliance with the FSB Principles and FSB Implementation Standards and promotes "appropriate compensation practices that create the right incentives for effective risk management and avoiding excessive risk-taking". The Methodology review framework centres on: (a) Effective governance of compensation; (b) Effective alignment of compensation with prudent risk-taking; and (c) Effective supervisory oversight and engagement by stakeholders. The Methodology provides considerable flexibility to supervisors to ensure the effective application of FSB Principles and takes into account individual national circumstances, the size and complexity of financial institutions and the nature of each firm's business. The ultimate intention of the FSB Principles is to reduce individuals' incentives for taking excessive risk. The Methodology therefore focuses on employees whose professional activities have a material impact on banks' risk profiles, including material risk-takers and employees performing risk management and control functions and groups of employees who may together take material risks, i.e., loan officers. The Methodology has two main components: (i) supervisory guidance clarifying how FSB Principles and FSB Implementation Standards should be implemented by firms; and (ii) for each FSB Principle, a "toolkit" that should be adapted to existing supervisory approaches as well as to the institution being reviewed.		

REMUNERATION

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
Basel Principles for Enhancing Corporate Governance On March 16, 2010 the Basel Committee on Banking Supervision issued a consultation document, entitled "Principles for Enhancing Corporate Governance", on proposals for updating its principles on corporate governance, which were last updated in 2006. See the section on Corporate Governance for full details of the proposals. The following remuneration principles were included: (a) The board should oversee the compensation system's design and operation and review and monitor the system; and (b) An employee's compensation should be effectively aligned with prudent risk taking: compensation should be adjusted for all types of risk, compensation outcomes should be symmetric with risk outcomes, payment schedules should be sensitive to the time horizon of risks and the mix of cash, equity and other forms of payment should be consistent with risk alignment.	Responses to the consultation are due on June 15, 2010.	
FSB Principles for Sound Compensation Practices and FSB Implementation Standards The FSB published its FSB Principles in April 2009 and the FSB Implementation Standards in September 2009. The FSB Principles and FSB Implementation Standards are internationally agreed objectives and many initiatives are already underway at the national level to implement them. On March 30, 2010 the FSB published its Peer Review Report on the progress of implementation of both the Principles and the Implementation Standards by jurisdictions and significant financial institutions. The Peer Review Report notes that greater progress has been achieved in the areas of governance, establishing supervisory oversight and promoting disclosure of compensation. However, further work is required to raise standards of risk adjustment of pay structures. The Peer Review Report includes further recommendations which include (a) enhanced supervisory cooperation on compensation for cross-border firms; (b) enhanced standards of risk adjustment of pay structures should be raised across the industry; (c) increased coverage of nonbank financial institutions; and (d) active checking by supervisors that the composition of compensation committees meet appropriate standards of expertise and independence. The FSB also recommended that the Basel Committee should issue a consultation by the end of October 2010 on the range of methodologies for risk and performance alignment of compensation schemes and their effectiveness including methods for incorporating risk and performance into bonus pool and individual compensation, the design of deferred compensation, the relation between performance measures and ultimate value of deferred compensation instruments, malus triggers, the sensitivity of payout schedules to the time horizon of risk, the funding of deferrals and proportionality in the application of rules.	The Basel Committee consultation paper on the range of methodologies for risk and performance alignment of compensation schemes is due in October 2010. The FSB and the Basel Committee are also to consider incorporating disclosure requirements for compensation into Pillar 3 of Basel II by the end of 2010.	The FSB will conduct a follow-up review on compensation in Q2 2011.

OTC DERIVATIVE MARKETS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
EUROPEAN UNION		
European Proposals The European Commission published a Communication in October 2009 which sets out the following future policy actions it intends to take in this area. Both the European Parliament and the European Council have broadly supported these proposals. (a) Greater standardization of Over the Counter ("OTC") derivative contracts with non-standardized contracts being subject to more in-depth oversight by supervisors; (b) Mandatory clearing of standardized derivatives through central counterparties; (c) Regulation of Central Counterparties ("CCPs") and a regulatory and supervisory framework to support such regulation. The legislation would cover the activities of CCPs generally and not be limited to OTC derivatives but extend to all financial instruments as covered in MiFID. The key requirements relate to conduct of business and governance, legal protection of collateral and positions and risk management standards. It is proposed that the new European Securities and Markets Authority ("ESMA") would be responsible for authorization of CCPs with an appropriate allocation of responsibilities between national supervisors and ESMA for ongoing supervision. There would be a framework for recognizing third country CCPs based on prudential concerns; (d) In order to reflect the higher risks, higher capital charges for non-centrally cleared contracts. Capital charges apply after bilateral collateral exchange and netting of exposures so that market participants would be encouraged to clear more products centrally. The difference between capital charges for centrally cleared and bilaterally cleared contracts contained in the Capital Requirements Directive (comprising two directives: Directive 2006/48/EC and Directive 2006/48/EC) (the "CRD") would be widened. Proposals for amendments to capital charges have been included in the Commission's recent consultation for CRD IV. See the Capital Requirements section below; (e) Requirements that financial firms post initial margin and variation margin thereby incentivizing the use of CCP clearing. Appropriate exemptions for non-financial firms that guard against loopholes and regulatory arbitrage; (f) Mandatory reporting of all transactions to trade repositories; (g) Regulation of trade repositories with authorization by ESMA and an equivalence framework for third country repositories; (h) On-exchange trading for all standardized OTC derivative contracts; and (i) The Commission considers that more industry action is required and intends to set ambitious European targets for legal and process standardization.	The European Commission intends to propose legislation, referred to as the European market infrastructures legislation ("EMIL"), on regulating CCPs and trade repositories by mid-2010 with amendments to the CRD, MiFID and Market Abuse Directive being proposed by the end of 2010.	Developments in this area are still in early stages and any timeframe will depend on industry initiatives as well as when the initial draft legislation is put forward by the European Commission. In its Work Programme for 2010 published on March 31, 2010, the European Commission indicated that this is one of the initiatives it is committed to adopt in 2010.
European Central Bank Report on the Functioning of Financial Market Infrastructures On April 19, 2010 the European Central Bank published a report entitled "Report on the Lessons Learned from the Financial Crisis with regard to the Functioning of European Financial Market Infrastructures". The report considers issues that arose from the impact of the		

OTC DERIVATIVE MARKETS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
financial crisis on the functioning of European financial market infrastructures ("FMIs"), including systemically important payment systems, central counterparties and securities settlement systems. The report focuses on challenges that emerged during the financial crisis from (i) information flow following a default, (ii) default management, (iii) behavioral factors which adversely affected market liquidity conditions, and (iv) issues from the OTC markets. The report concludes that eight main lessons have been learned, which are: (a) Information on defaults needs to be dispersed to relevant authorities, FMIs and the market in an accurate, unambiguous, complete, transparent and timely manner; (b) Risk management frameworks of FMIs and their participants are essential to minimize the contagion risks of a potential default; (c) Final decisions on activation of preventative measures will be taken by FMIs and their participants with assistance from market authorities and central banks; (d) Possible inconsistencies between FMIs' default management rules should be identified and interconnected FMIs should coordinate the implementation of their rules; (e) All participants should familiarize themselves with default management procedures; (f) Difficulties in applying default management procedures should be evaluated; (g) FMIs should enhance their liquidity resilience; and (h) The resilience and transparency of the OTC derivatives markets should be enhanced. The report recommends that FMIs take the following actions: (a) Enhancement of direct monitoring of the creditworthiness of critical counterparties; (b) Definition of criteria for, and identification of, critical FMI participants; (c) Introduction of some flexibility for FMIs, where needed, when applying preventative measures in response to unforeseeable market conditions; (d) Promotion of practical education measures on default procedures; and (e) Enhancement of FMI's stress testing exercises.		

OTC DERIVATIVE MARKETS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
UNITED KINGDOM		
FSA and HM Treasury Statement on Measures Required to Reform Derivatives Markets The FSA and HM Treasury published a joint paper, "Reforming OTC Derivative markets: a UK perspective" (December 2009) in which the UK Authorities set out the measures they consider need to be taken to reform the OTC derivative markets. The measures are: (a) Greater standardization of OTC derivative contracts; (b) International agreement between regulators and market participants on what standardization means and what is achievable for each asset class; (c) CCP usage targets should be set and progress monitored instead of mandating CCP clearing; (d) All financial firms should use CCP clearing for clearing eligible products. Trades not suitable for clearing should be subject to robust bilateral collateral arrangements and appropriate risk capital requirements; (e) Non-financial firms should make use of bilateral collateralization in the first event. If operational or financial resources don't permit this then firms should expect to be charged by their financial counterparty the cost of the appropriate capital charge; (f) Capital charges which reflect the risk posed to the financial system (as opposed to penal charges), including a capital charge for exposure to a CCP; (g) Consistent, global and high standard regulation of CCPs, including through a clearing directive in Europe which is aligned with internationally developed principles. The FSA does not consider that authorization and supervision at a pan-European level will work because such body would be unable to bear the fiscal responsibility in the event of a CCP's failure; (h) Cost-benefit analysis should be undertaken to determine the need for trade repositories in smaller market segments. There is no need for data repositories to be located in Europe provided there are internationally agreed information sharing arrangements. A single trade repository for each asset class avoids the risk of data fragmentation. Trade repositories should be subject to regulatory requirements but the ESMA is not the suitable body for this given the global context of trade repositories. A high level approach would be sufficient with provisions relating to legal basis, operational resilience, access criteria and transparency. A framework to support sharing of relevant information between the appropriate authorities is required – the OTC Derivatives Regulators Forum is the best international forum to achieve this with work already in hand; and (i) Mandating exchange trading would be detrimental to the markets as the OTC markets allow participants to hedge specific risks and manage risks in a way that is not possible through standardized exchange traded contracts. Regulatory objectives could be achieved by other means without significantly altering the structure of the market.	The FSA states that it will continue to work with its international colleagues and market industry to take forward the reform proposals.	

OTC DERIVATIVE MARKETS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
House of Lords Inquiry Following its inquiry into the regulation of the derivatives market the House of Lords Select Committee on the European Union published its report on March 31, 2010. The following are the main conclusions and recommendations: (a) Detail is required as to which contracts will be covered by the definition of derivatives in the proposed legislation, including clarification on the scope and exemptions applicable; (b) The increased use of trade repositories is supported but further consideration needs to be given to access to data held by repositories. Whilst the regulatory framework for repositories should be at EU level, further consideration needs to be given to the appropriate level of supervision within the EU; (c) Increased standardization of contracts is supported but not all products can be standardized and allowance should be made for bespoke contracts that meet the specific needs of corporates; (d) Standardization should not lead to compulsory CCP clearing eligibility and a lack of standardization should not necessarily indicate clearing ineligibility. There needs to be a clear definition of which contracts should be regarded as both standardized and eligible for central clearing; (e) CCPs should not be allowed to clear a product if they are not prepared to manage the risk. Legislation should not force products through central clearing as this may increase risk; (f) Bespoke (i.e., custom-made) products should be appropriately risk-managed through the use of capital charges proportionate to the risk - disproportionate capital charges could discourage innovation or force products through central clearing. Applying capital charges to encourage standardization rather than on a basis proportionate to risk could adversely effect stability and increase the cost of using derivatives to manage risk; (g) The EC's proposals on the use of derivatives by non-financial businesses could have the effect of adversely penalizing the use of this type of derivative (which is less risky because it is closely related to the underlying asset). The Commission's confirmation that the effect of these proposals will be considered in its impact assessment is welcomed; (h) A global approach to the regulation of CCPs is needed. Detailed examination of where minimum standards are appropriate and whether specific calculations on risk and margins are best left to each clearing house; (i) Supervision of CCPs at EU level is unrealistic given the absence of any cross-border fiscal burden-sharing arrangements for financial institutions; (j) The proposals to include specific requirements for separation of the assets of a CCP from collateral are attractive; and (k) Supervision will be more effective if it ensures that CCPs compete on quality of service rather than size of margin.	The House of Lords Select Committee on the European Union has stated that it will scrutinize the legislative proposal of the European Commission when it is published.	

OTC DERIVATIVE MARKETS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
UNITED STATES		
The House of Representatives The House of Representatives passed H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009 (the "House Bill") on December 12, 2009. The House Bill attempts to increase transparency and availability and reliability of information in the over-the-counter derivatives markets by providing for the registration, supervision, and regulation of swaps and swap market participants. Specifically, the House Bill: (a) Authorizes the SEC and the Commodity Futures Trading Commission ("CFTC") to regulate swaps, swap dealers, and certain end-users referred to as "major swap participants," defined as a non-dealer with a substantial net position in outstanding swaps (excluding commercial hedges), or whose outstanding swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets; (b) Requires clearing of certain swaps if (a) a clearing organization will accept a swap for clearing, and (b) the CFTC/SEC require that swap to be cleared; (c) Requires that all swaps that are subject to the clearing requirement also be traded on an exchange or on a swap execution facility; (d) Imposes minimum capital requirements and initial and variation margin requirements to help ensure safety and soundness of the swap markets; (e) Subjects swap dealers and major swap participants to recordkeeping, reporting, and business conduct requirements, for example: (i) daily trading records of swaps and all related records (including related cash or forward transactions); (ii) recorded communications including electronic mail, instant messages, and recordings of telephone calls; (iii) daily trading records for each customer or counterparty; and (iv) a complete audit trail for conducting comprehensive and accurate trade reconstructions; and (f) Imposes size limits on positions, other than bona fide hedge positions, in physically-settled commodity transactions or options thereon, subject to certain exclusions.	The House Bill was passed in December 2009	The House Bill was passed. If and when a corresponding bill will be passed by the Senate is unknown.
Senate - The Senate Bill On March 15, 2010 U.S. Senate Banking Committee Chairman Christopher Dodd issued his proposed "Restoring American Financial Stability Act 2010" (the "Senate Bill") for U.S. Senate consideration. The Senate Bill was approved by the Senate Banking Committee on March 22, 2010 and introduced to the full Senate on April 15, 2010. The over-the-counter derivatives portion of the Senate Bill is nearly identical to the corresponding portion of the House Bill. It contains similar requirements with respect to central clearing, reporting and recordkeeping, minimum capital and margin, and position limits. The main differences are as follows: (a) The definition of "major swap participant" in the Senate Bill differs slightly in the second prong, which reads "or if such participant's failure to perform under the contract would cause significant credit losses to its counterparties" rather than, "or whose outstanding swaps	The Senate Bill was approved by the Senate Banking Committee. The full Senate will debate and offer amendments to the Senate Bill. If the Senate passes a bill, then it would be considered by the House of Representatives to deal with differences from the House Bill or be sent to a conference of the House of Representatives and Senate for final resolution.	

OTC DERIVATIVE MARKETS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets"; (b) The Senate Bill permits the CFTC/SEC to exempt from the clearing requirement a non-dealer, non-major swap participant who does not meet the eligibility requirements of a derivatives clearing organization but, unlike the House Bill, this is a permission exemption as opposed to an automatic exemption. In addition, the exemption from the clearing requirement in the Senate Bill for hedges is narrower than in the House Bill because of the requirement that a swap be an "effective hedge under generally accepted accounting principles"; (c) The Senate Bill requires that all cleared swaps must also be traded on a regulated exchange or on an "alternative swap execution facility," the latter of which differs slightly from the House Bill and is defined as an electronic trading system with pre-trade and post-trade transparency in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made; and (d) Cleared swaps will have a minimum capital requirement (greater than zero), and for non-cleared swaps, posting of margin will be required in order to "offset the greater risk to the dealer, participant and/or financial system".		
Senate - The Lincoln Derivatives Bill On April 21, 2010, the Senate Agriculture Committee approved the "Wall Street Transparency and Accountability Act of 2010" (the "Lincoln Derivatives Bill") introduced by Committee Chairman Blanche Lincoln. The Lincoln Derivatives Bill is similar in many ways to the derivatives reform titles of the House Bill and the Senate Bill (summarized above), but would impose some additional requirements. For example: (a) Prohibits the provision of U.S. federal government assistance (for example, in the form of Federal Reserve advances as well as emergency liquidity or debt guarantee program assistance) with respect to the activities of regulated swap entities such as swap dealers and major swap participants. This could effectively require or encourage financial institutions to separate their derivatives businesses from their U.S. bank or U.S. branch offices; (b) Regulates foreign exchange forward and swap transactions absent a specific exemption; (c) Imposes a fiduciary duty on swap dealers transacting with municipalities and other government agencies and pension plans, endowments or retirement plans; (d) Imposes margin segregation standards on swaps, similar to those currently applicable to futures commission merchants under the Commodity Exchange Act; (e) Empowers the CFTC and SEC to investigate and report on so-called "abusive swaps," which are swaps or security-based swaps that are detrimental to the stability of the financial markets or their participants; (f) Contains a prohibition on entering into a swap where the party knows, or has reason to know, that its counterparty will or could use the swap to defraud a third party or the public or to violate any provision of law; and	It is expected that elements of the Lincoln Derivatives Bill may replace (or otherwise be incorporated into) the derivatives title of the Senate Bill as the Senate Bill is considered on the Senate floor.	

OTC DERIVATIVE MARKETS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
(g) Generally closely tracks the definition of "major swap participant" included in the House Bill but is broader in the sense that it would cover certain highly leveraged financial entities that would not necessarily be considered major swap participants under the House Bill.		
INTERNATIONAL		
ISDA, other Market Associations, Dealers & Buy-side Institutions International Swaps and Derivatives Association ("ISDA") and market participants have been collaborating to deliver structural improvements to the global OTC derivatives markets. The improvements reached, as of March 1, 2010 include implementation of the revised and formal ISDA Governance framework, product standardization for credit derivatives, the extension of clearing services to the buy-side, the successful launch of Credit Default Swap clearing in Europe by ICE Clear Europe, exceeding clearing targets on dealer-to-dealer new and historic trade volume for clearing eligible products, the establishment of global data repositories for credit derivative and interest rate derivative products, improvements to the OTC collateral process through portfolio management and dispute resolution procedures and increased transparency through public dissemination of data by the DTCC Warehouse Trust. On March 1, 2010 the industry committed to widening the set of OTC derivatives eligible for clearing, the expansion of buy-side access to clearing, increased product, processing and legal standardization for credit, interest rate and equity derivatives, the development of an industry framework for resolving disputed margin calls and improving bilateral collateral management, meeting further operational efficiency targets and establishing a repository for equity derivatives.	ISDA continues to work with the industry in this area.	
CPSS-IOSCO In February 2010 a review of the existing sets of standards and recommendations for financial market infrastructures, such as payment systems, securities settlement systems and central counterparties, was launched. In July 2009 a review of the application of the 2004 CPSS-IOSCO Recommendations for Central Counterparties to clearing arrangements for OTC derivatives was launched.	CPSS-IOSCO aim to publish revised recommendations in early 2011 for public consultation following the review announced in February 2010.	
IMF Global Financial Stability Report - Derivatives The IMF published three chapters of its "Global Financial Stability Report" in April 2010. Chapter Three of the report, on derivatives, proposes that risk-based incentives based on capital charges would be a preferred incentive to explicit mandating that OTC derivatives must move to CCPs. If authorities decide to mandate such a move there will be high upfront costs, and therefore the move would need to be phased in gradually. The report notes the following best-practice risk management elements: (a) CCPs should be established with independent decision-making bodies that are designed to minimize potential conflicts of interest and maintain a high level of risk management; (b) CCP membership should be objective and subject to stringent financial resources and operational capacity requirements to ensure members can meet their obligations to the CCP, including contributions to the guarantee fund;		

OTC DERIVATIVE MARKETS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
(c) CCPs should arrange for emergency credit lines from other financial institutions that are not members and, if systemically important, from the central bank; (d) CCPs should have crisis management arrangements in place in the event of a member's default, including mechanisms to close out or transfer positions to non-defaulting members in a timely manner; and (e) Members should be required to post high-quality collateral as margin against their positions, margin adjustments should be made daily and even intra-day during market stress periods. Furthermore, the report makes the following recommendations: (a) Central banks should provide CCPs access to their payment infrastructure and put in place emergency liquidity backstops with the CCPs; (b) CCPs should be able to deposit cash collateral with their local central banks to facilitate ease of access in stress conditions; (c) Where a CCP is not present to assume counterparty risk, market participants should be mandated to record and store all transactions in regulated and supervised central trade repositories with details of individual transaction data being available to all relevant regulators; and (d) Authorities should have contingency plans and appropriate powers to ensure that the failure of a CCP does not lead to systemic disruptions in markets, including plans for emergency liquidity provision and orderly resolution. The report concludes that to avoid regulatory arbitrage a global framework for CCP, risk management should be instituted. A coordinated response from authorities to a CCP failure in any jurisdiction is also necessary. On April 1, 2010 the IMF published a working paper entitled "Collateral, Netting and Systemic Risk in the OTC Derivatives Market". The paper is intended as a contribution to the ongoing policy debate. The paper concludes that (i) the overall netting benefits may be less if the several CCPs that are in operation are not linked. The margin requirements for multiple CCPs where there is no interoperability will be higher than if only one CCP existed or if all the CCPs were linked, and (ii) systemic risk may also increase on the books of large banks if only standardized contracts are cleared at CCPs, making banks unable to net between standard and nonstandard contacts. The paper highlights that going forward, regulators will need to address jurisdictional issues to avoid asymmetries between CCP requirements, especially for margin. The policy implications identified in the paper are: (a) Regulators should be aware that large connected financial institutions active in the derivatives market under-collateralize relative to the risk they assume; (b) Currently, collateral posted is allowed to be rehypothecated meaning that collateral needs will be even more onerous if placed at CCPs. Offloading OTC contracts to CCPs would require large increases in collateral; (c) If only some standard or eligible contracts are moved to CCPs, the systemic risk in large connected financial institutions will not be		

OTC DERIVATIVE MARKETS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
reduced. The IMF suggests that an appropriate levy may force such institutions to offload a critical mass to CCPs and thereby reduce instability; and (d) Competing CCPs that lower the threshold for margin will require regulatory oversight to ensure the robustness of the CCP and lower the chances of its default. Adherence to a strong globally consistent standard is recommended by the IMF to avoid regulatory arbitrage.		

INVESTMENT / FUND MANAGERS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
EUROPEAN UNION		
Proposed AIFM Directive The European Commission published a proposed Directive on Alternative Investment Fund Managers ("AIFM") (the "Directive") in April 2009. Currently the European Parliament and the European Council are negotiating to reach a final agreed directive. For an overview of the legislation proposed by the Commission, see our client publication "Updated: New European Proposals for the Regulation of Alternative Investment Fund Managers" dated May 5, 2009. An overview of the key differences and similarities between the separate revised drafts of the Directive published by the three European bodies is set out in our client publication "Update on the Proposed European AIFM Directive: Council and Parliament Publish Draft Amendments" dated December 8, 2009. The proposed legislation introduces pan-European regulation of investment managers, but it also has collateral effects on non-EU investment managers, funds, prime brokers and other service providers. The main proposals are: (a) Compulsory authorization of fund managers located in the EU in order to manage funds; (b) Authorized managers would be able to market EU-domiciled funds to professional investors across Europe; (c) Additional requirements for authorized managers to market non-EU domiciled funds to professional investors; (d) Marketing of funds to retail investors according to each Member State's rules; (e) Marketing of funds by non-EU managers restricted (see discussion below); (f) Compliance with remuneration requirements which may be similar to those set out in the Financial Stability Board's Principles for Sound Compensation and related Standards. For example, a significant portion of bonuses paid to senior employees should vest over time. More information on proposals on remuneration generally can be found in the Remuneration section above; (g) Appointment of independent valuators and depositories with imposition of liability on depositories; (h) Restrictions on the ability of EU Managers to delegate to non-EU managers and other service providers; (i) Minimum capital requirements for authorized fund managers; (j) Pre-investment and ongoing disclosures to investors; (k) Ongoing reporting obligations to regulatory authorities; (l) Additional disclosure obligations for managers engaging in high levels of leverage and limits on leverage (mainly affecting hedge funds); and (m) Additional disclosure obligations for managers holding a controlling influence in issuers and non-listed companies (mainly affecting private equity funds).	The European Parliament is continuing to review proposed amendments to the Directive. April 27, 2010 is the indicative date for the Parliament's Committee on Economic and Monetary Affairs to vote on the proposed amendments to the Directive, however, this may be delayed due to the large number of amendments that were tabled. The European Council is still in the process of reaching agreement among its members as to the text of the Directive. On March 16, 2010 the Spanish Presidency unexpectedly announced that the Economic and Financial Affairs Council (known as "Ecofin") had postponed its decision on the draft Directive in order to "ensure the greatest level of agreement possible". The next Ecofin meeting is due to be held on May 18, 2010. Nevertheless, the Council's position is still expected to be finalized during the next few months. Despite the delay at Council level, the European Parliament and the European Council are still being encouraged to start negotiations with each other earlier than expected (i.e., before either has a final text) in order to try and reach a final text before the scheduled first reading in the European Parliament in July 2010.	If adopted, it is possible that implementation of the Directive across Europe will take place by the end of 2012.

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MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
Report from the Permanent Representatives Committee The current unresolved issues at European Council level were identified in a brief report issued by the Permanent Representatives Committee of the European Council on March 11, 2010. Those outstanding issues particularly related to: (a) Eligible entities for depositaries and the possibility of discharging liability in the event of delegation; (b) The proposal to allow non-EU AIFM to market funds to professional investors in their territory if they comply with certain minimum rules; and (c) Remuneration, valuations (in particular the issue of liability) and reporting obligations.	It was noted in the Report that out of all the Member States, the UK delegation had the most reservations about the current European Council draft of the Directive. It is anticipated that the European Council will imminently reach agreement on a version of the AIFM Directive.	
UNITED KINGDOM		
House of Lords Report on the Proposed AIFM Directive The House of Lords European Union Committee issued a Report on February 10, 2010 on the proposed European AIFM Directive (for details of the proposed Directive see above). The following are the main issues raised by the House of Lords' Report: (a) A European Union Directive to regulate fund managers should be in line with, and complement, global arrangements. Coordination with the U.S. regulatory regime in particular is essential to avoid a situation in which the EU alternative investment fund industry loses competitiveness at a global level as a result of regulatory arbitrage. (b) The requirements introduced by the Directive for disclosure to supervisors by managers should take into consideration the different types of alternative investment funds. (c) Requirements on provision of information need further consideration to ensure that the Directive provides supervisors with the relevant data and the resources to analyze this data. (d) The proposal for a single leverage cap on managers in the Directive should be replaced with a provision for national supervisors to have the power to impose leverage caps where appropriate, based on the aggregated information they receive from fund managers. This position is in line with the European Council's view; the European Parliament has adopted the alternative view that the Commission should be able to impose caps in exceptional circumstances. (e) The proposed rules for remuneration of managers need further consideration.		
FSA Note on the Proposed Directive The FSA published a briefing on January 21, 2010 on the proposed Directive which outlines the following areas that the FSA considers are most conducive to change: (a) The "one-size-fits-all" approach which does not recognize the relative risks posed by different types and sizes of alternative investment	The FSA will begin the consultation and implementation process once the proposed Directive is in final form.	No date has yet been agreed for entry into force and implementation of the proposed Directive in the UK. The FSA has indicated that implementation is possible in late 2012 or mid 2013.

INVESTMENT / FUND MANAGERS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
fund managers and different types of alternative investment funds. (b) The restrictions on delegation to non-European Economic Area entities in terms of management services, custody and depositary activity. (c) The potential for disproportionate regulation which fails to achieve either political or regulatory objectives (e.g., arbitrary leverage caps and 'portfolio company' disclosure). The FSA also expressed doubts that the benefits from the proposed creation of a pan-EU 'private placement' regime for marketing alternative investment funds to professional investors would be realized as the proposal restricts funds not domiciled in the EU.		
UNITED STATES		
The House of Representatives The House of Representatives passed H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009 (the "House Bill") on December 12, 2009. The House Bill does not require private investment funds (such as hedge funds or private equity funds) themselves to register with the SEC as investment companies under the U.S. Investment Company Act of 1940 (investment company registration would have subjected such funds to stringent operational restrictions, including with respect to leverage, affiliate transactions, redemptions, and board independence). Instead, the House Bill requires SEC registration for advisers to such funds under the U.S. Investment Advisers Act of 1940 ("Advisers Act"). The bill imposes SEC registration on advisers to private funds chiefly by eliminating the so-called "private adviser", or "fourteen-or-fewer" clients, exemption to adviser registration. The private adviser exemption had been the principal exemption relied upon by advisers to hedge funds, private equity funds, real estate funds, and other private funds. Registration under the Advisers Act would subject presently unregistered advisers to the full panoply of requirements under the Advisers Act and regulations thereunder, including: (a) Advisory contracts; (b) Advisory fees; (c) Fiduciary duties and standards of care to clients; (d) Custody and possession of client assets; (e) Recordkeeping; (f) Advertising; (g) Trading and investment practices; (h) Supervision, compliance, and code of ethics practices, policies, and procedures; (i) Solicitors and placement agents; and	The House Bill was passed in December 2009.	The House Bill was passed. If and when a corresponding bill will be passed by the Senate is unknown.

INVESTMENT / FUND MANAGERS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
(j) SEC inspections, discipline, and disqualification. There is a *de minimis* exemption for advisers that solely advise private funds and that have cumulative assets under management of less than U.S. $150 million. The House Bill also contains a carve-out for advisers to venture capital funds under which the SEC is required to issue a rule providing a registration exemption for advisers to venture capital funds, as the SEC may define them. The House Bill's effect on non-U.S. investment advisers could be significant. With the private adviser exemption no longer available, non-U.S. advisers may need to register under the Advisers Act unless they can rely on the House Bill's defined exemption for "Foreign Private Advisers." A Foreign Private Adviser would be an adviser that satisfies each of the following three tests: (a) Has no place of business in the U.S.; (b) During the preceding 12 months has had, in total, (i) fewer than 15 clients and investors in the U.S. in private funds advised by the investment advisers; (ii) aggregate assets under management attributable to clients and investors in the U.S. in private funds of less than U.S. $25 million or such higher amount as the SEC deems by rule to be appropriate for the protection of investors; and (c) Neither holds itself out to the U.S. public as an investment adviser nor acts as an investment adviser to a registered investment company.		
The Senate On March 15, 2010 U.S. Senate Banking Committee Chairman Christopher Dodd issued his proposed "Restoring American Financial Stability Act 2010" (the "Senate Bill") for U.S. Senate consideration. The Senate Bill was approved by the Senate Banking Committee on March 22, 2010 and introduced to the full Senate on April 15, 2010. The Senate Bill adopts a similar approach to the House Bill with respect to private fund advisers, requiring Advisers Act registration for many fund advisers by eliminating the private adviser exemption. There are some substantive differences between the bills, however. The Senate Bill contains a registration exemption for advisers to family offices, a venture capital fund, and private equity funds (though private equity funds would be subject to recordkeeping and information sharing rules promulgated by the SEC), and directs the SEC to promulgate rules defining the terms "family office", "venture capital fund", and "private equity fund" . The House Bill does not exempt advisers to private equity funds or family offices from registration. The Senate Bill also diverges from the House Bill regarding a *de minimis* exemption from SEC registration. The House Bill contains a *de minimis* exemption for advisers that advise solely private funds and that have cumulative assets under management of less than U.S. $150 million. The Senate Bill's approach is to instead raise the threshold for federal registration for all advisers to U.S. $100 million, up from the current U.S. $25 million threshold. Such an increase would require a large number of SEC-registered advisers to shift to state regulation.	The Senate Bill was approved by the Senate Banking Committee in March 2010. The full Senate will debate and offer amendments to the Senate Bill. If the Senate passes a bill, then it would be considered by the House of Representatives to deal with differences from the House Bill or be sent to a conference of the House of Representatives and Senate for final resolution.	

INVESTMENT / FUND MANAGERS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
The Senate Bill also contains a registration exemption for a "foreign private adviser", which it defines as any investment adviser who (1) has no place of business in the U.S., (2) has fewer than 15 clients who are domiciled in or residents of the U.S., (3) has assets under management attributable to clients who are domiciled in or residents of the U.S. of less than $25 million or such higher amount as the SEC may deem appropriate, and (4) neither holds itself out as an adviser in the U.S. nor acts as an investment adviser to a registered investment company or business development company. That language differs somewhat from the House Bill's foreign private adviser exemption, which, on point (2), does not refer to advisers to fewer than 15 U.S. clients but rather to advisers to fewer than 15 clients and investors in the U.S. in private funds advised by the investment adviser. That distinction may be significant, as the Senate Bill expressly prohibits the SEC from defining the term "client" to include an investor in a private fund managed by an investment adviser. As a result, the Senate Bill's foreign private adviser exemption may be more expansive than the corresponding exemption found in the House Bill. Finally, the Senate Bill requires the SEC to promulgate rules increasing the "accredited investor" threshold by adjusting the current figures for inflation since such thresholds were determined and to make such adjustments not less than once every five years. The thresholds are currently $200,000 in income for a natural person (or $300,000 for a couple) or $1,000,000 in assets (all figures in USD). See http://www.sec.gov/answers/accred.htm for additional information on "accredited investor" status.		
INTERNATIONAL		
IOSCO on Hedge Funds IOSCO published a report in September 2009 which sets out international regulatory standards on funds of hedge funds ("FOHF") (the "Standards") based on best market practice. The Standards, which relate to liquidity risk and the due diligence process, aim to address investor protection issues which have arisen due to the increased involvement of retail investors in hedge funds through FOHFs. In June 2009 IOSCO recommended six high level principles on the regulation of hedge funds following a consultation by the Task Force on Unregulated Financial Entities which was set up in response to the financial crisis. The six principles are: (a) Hedge funds and/or hedge fund managers/advisers should be subject to mandatory registration; (b) Registered hedge fund managers/advisers should be subject to appropriate ongoing regulatory requirements relating to organizational and operational standards, conflicts of interest and conduct of business rules, disclosure to investors and prudential regulation; (c) Prime brokers and banks which provide funding to hedge funds should be subject to mandatory registration, regulation and supervision and should have appropriate risk management systems and controls in place to monitor their credit risk exposures to hedge funds; (d) Hedge fund managers/advisers and prime brokers should provide information to regulators for systemic risk purposes; (e) Regulators should encourage and take account of the development, implementation and convergence of industry good practices, where appropriate; and (f) Regulators should have the authority to cooperate and share information, where appropriate, with each other.		

SHORT SELLING

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
EUROPEAN UNION		
CESR Recommendations The Committee of European Securities Regulators ("CESR") issued a report on March 2, 2010 recommending a pan-European disclosure regime for significant short selling positions. The main features of the proposed regime are: (a) A combination of private and public disclosure; (b) It would cover net short positions (calculated as a percentage of a company's issued share capital) in all shares admitted to trading on an EEA regulated market and/or multilateral trading facility, other than those whose primary market is located outside the EEA; (c) Disclosure requirements: (i) disclosure to regulator of changes in net short positions crossing a 0.2 percent. threshold, with further reportable thresholds at 0.1 percent. increments; and (ii) public disclosure to market of changes in net short positions crossing a 0.5 percent. threshold, with further reportable thresholds at 0.1 percent. increments; (d) Economic short positions referenced by derivatives (whether exchange-traded or OTC) indices or baskets would be covered; and (e) Disclosure reports must be made on the trading day following the day the relevant threshold had been crossed (T+1). CESR will publish its determination on the mechanism of disclosure reporting and the content of the disclosure reports which must be made in due course. See our client publication, "CESR Model for a Permanent Pan-European Short Selling Disclosure Regime" dated March 15, 2010.	The European Commission is expected to propose draft legislation in Q3 2010. In the meantime, CESR members will begin the process of implementing national disclosure regimes to the extent legally empowered.	In its Work Programme for 2010, published on March 31, 2010, the European Commission indicated that this is one of the initiatives it is committed to adopt in 2010.
Proposed Alternative Investment Fund Managers Directive The provisions in the original draft Directive on Alternative Investment Fund Managers, which effectively prohibited naked short sales, have been removed. Whilst affected fund managers may be asked to provide information on short selling, more drastic measures are not proposed. The Gauzès Report of the European Parliament recommends the retention of the original provisions and the imposition of an obligation to disclose information about short selling to regulators, with the possibility that the new European Securities Markets Authority could restrict short selling activities in exceptional circumstances.		
UNITED KINGDOM		
Current FSA Regime and New Statutory Powers Currently, the FSA requires disclosure to the market of net short positions of 0.25 percent or more of the issued share capital of UK financial sector companies or companies carrying out a rights issue. In 2009 the FSA consulted on a longer-term disclosure regime for	The FSA powers to issue the short selling rules will come into effect on June 8, 2010. The FSA has stated that it will publish a	

SHORT SELLING

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
short selling in all equities. The Feedback Statement to that consultation stated that the FSA intended to pursue a permanent disclosure regime but that the current requirements would remain in place until international and European agreement had been reached. The Financial Services Act 2010 (the "FS Act 2010") was passed on April 8, 2010. Some sections of the FS Act 2010 came into force on that day, but others, such as section 8 on short selling rules, will come into effect two months later. Section 8 inserts a new Part 8A into the Financial Services and Markets Act 2000 (the "FSMA") which includes the following provisions: (a) The FSA is given authority to make rules prohibiting persons from engaging in short selling and to make rules requiring disclosure of specified information on short selling by a specific time and in a specific manner. These rules relate to UK financial instruments only but may apply to short selling that occurs outside of the UK by persons outside of the UK. The rules may also apply to short selling engaged in before the rules were made where the resulting short position is still open when the rules are made; (b) The FSA is given authority to make emergency rules without complying with the consultation requirements of the FSMA if it considers it necessary to do so to maintain confidence in or protect the stability of the UK financial system. The emergency rules may only be in effect for three months unless the FSA directs that the emergency rules should be extended for a further three months if necessary; (c) The FSA is given powers to require information or documents for the purpose of determining whether a person, or a connected person, has contravened the short selling rules. If the document which the FSA requires to be produced is in the possession of a third party, the FSA may exercise its powers in relation to that third party. A lawyer may be required to provide the name and address of the lawyer's client; and (d) The FSA is given powers to impose penalties or issue censures against a person for breach of the short selling rules for a period of three years from the date on which the FSA first knew of the contravention of the rules, unless it has given a warning notice to the person.	consultation in due course on the implementation of the FS Act 2010.	
UNITED STATES		
New SEC Rules on a Short Sale Circuit Breaker On February 24, 2010, the SEC adopted a new rule to place certain restrictions on short selling when a stock is experiencing significant downward price pressure. Specifically, the SEC amended Rule 201 of Regulation SHO to include the following provisions: (a) Short Sale Circuit Breaker: A circuit breaker is triggered for a security on any day in which the price of the security declines by ten percent or more from the prior day's closing price; (b) Price Test Restriction: After the circuit breaker has been triggered, the alternative uptick rule, in which no person can short a covered security at a price that is less than or equal to the current national best bid, would apply to short sale orders in that security for the remainder of the day as well as the following day; (c) Covered Securities: The rule applies to all equity securities that are listed on a national securities exchange, whether traded on an exchange or in the over-the-counter market; and	Broker-dealers and trading centers should begin the process of establishing and maintaining written supervisory procedures to surveil and put into place a policy for short sales.	The new Rule on short sale circuit breaker will become effective on November 10, 2010.

SHORT SELLING

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
(d) Implementation: The rule requires trading centers to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the execution or display of a prohibited short sale. See our client publication, "Short Sales: A New Circuit Breaker" dated March 12, 2010.		
New SEC Rules on Failure to Close Failed Positions On July 27, 2009, the SEC made permanent Rule 204T to Regulation SHO, adopting it as Rule 204 of that Regulation. Rule 204 imposes penalties for failing to deliver an equity security. Rule 204 imposes a penalty on any participant of a registered clearing agency, and any broker-dealer from which it receives trades for clearance and settlement, for having a fail to deliver position at a registered clearing agency in any equity security. Any participant of a registered clearing agency must, by no later than the beginning of regular trading hours on the settlement day following the settlement date, immediately close out the fail to deliver position by borrowing or purchasing securities of like kind and quantity. Any participant and related broker-dealer who does not comply with the close-out rules discussed above (i) will be prohibited from accepting a short sale order in the equity security from another person, and (ii) will be prohibited from effecting a short sale in the equity security for its own account, without first borrowing the security or entering into a bona fide arrangement to borrow the related security. See our client publication, "Global Clampdown on Short Selling: an Overview (v6)" dated February 12, 2010, for information on Rule 204.	The rules on failure to close failed positions became effective on July 31, 2009.	
INTERNATIONAL		
IOSCO High-Level Principles IOSCO issued a report on the regulation of short selling in June 2009 outlining high-level principles for the regulation of short selling to assist regulators in setting up a regulatory regime. The report recommends that effective regulation should comprise the following four principles: (a) Short selling should be subject to appropriate controls to reduce or minimize the potential risks that could affect the orderly and efficient functioning and stability of the financial markets; (b) Short selling should be subject to a reporting regime that provides timely information to the market or market authorities; (c) Short selling should be subject to an effective compliance and enforcement system; and (d) Short selling regulation should allow for appropriate exceptions for certain types of transactions for efficient market functioning and development. See our client publication, "Global Clampdown on Short Selling: an Overview", the latest update of which was published on February 12, 2010.	No further steps have been indicated by IOSCO.	

CREDIT RATING AGENCIES

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
EUROPEAN UNION		
European Regulation The Regulation of the European Parliament and of the Council on Credit Rating Agencies came into force on December 7, 2009 (the "Regulation"). The Regulation creates a common approach to regulation of credit rating agencies ("CRAs") throughout the EU, avoiding diverging measures at national level. The key elements of the Regulation are: (a) Credit institutions and investment firms, amongst others, may only use credit ratings for regulatory purposes if they are issued by a CRA established and registered in the European Community; (b) CRAs must register under the Regulation with the relevant regulator, providing information such as the procedures to identify and manage conflicts of interest, information about employees and methods used for issuing credit ratings; (c) CRAs are required to make certain public disclosures, such as methodologies, models and key assumptions used in the rating process, an annual transparency report, actual and potential conflicts of interest, policies regarding the publication of credit ratings and their ancillary services; and (d) Independence requirements to ensure the independence of the rating process including requiring CRAs to have a supervisory board, limiting the activities of CRAs, record-keeping requirements and ensuring employees involved in the credit rating process have the appropriate knowledge and experience. On March 8, 2010 the Committee of European Securities Regulators ("CESR") issued FAQs on the Regulation. See our client publication, "EU Regulation on Credit Rating Agencies Comes into Force" dated November 18, 2009.	CESR is to issue guidance on issues such as the registration process, the coordination of colleges and enforcement. The European Commission stated, in its Work Program 2010, that it will be undertaking a revision of the Credit Rating Agencies Regulation to introduce centralized oversight of CRAs operating in the EU.	All CRAs operating in the EU before June 7, 2010 which intend to apply for registration under the Regulation must adopt all necessary measures to comply with its provisions by September 7, 2010. Article 4 comes into effect on December 7, 2010 and requires credit institutions and investment firms, amongst others, to only use credit ratings for regulatory purposes if they have been issued by CRAs registered and established in the EU.
UNITED KINGDOM		
On March 23, 2010 the Credit Rating Agencies Regulations 2010 (the "CRA Regulations") were made in order to implement the EU Regulation on CRAs (discussed above). The CRA Regulations designate the FSA as the competent authority for the purposes of the EU Regulation, confer investigatory powers on the FSA and create penalties for non-compliance.	The FSA has indicated that it will publish a regulatory guide on CRAs in May 2010.	The CRA Regulations come into effect on June 7, 2010.
UNITED STATES		
SEC Rule Amendments Applicable to Nationally Recognized Statistical Rating Organizations On February 2, 2009, the SEC adopted amendments to rules governing the conduct of Nationally Recognized Statistical Rating Organizations ("NRSROs") requiring them to, among other things: (a) Provide enhanced disclosure of performance measurements statistics and the procedures and methodologies used by the NRSRO in determining credit ratings for structured finance products and other debt securities;	The rule amendments became effective on April 10, 2009.	The date for compliance is April 10, 2009 and August 10, 2010 for the amendments related to making ratings histories publicly available.

CREDIT RATING AGENCIES

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
(b) Make, keep and preserve additional records and to require that a portion of these new records be made publicly available; (c) Make publicly available on its Internet Web site in eXtensible Business Reporting Language ("XBRL") format a random sample of 10 percent of the ratings histories of credit ratings paid for by the obligor being rated or by the issuer, underwriter or sponsor of the security being rated in each class of credit ratings for which it is registered and has issued 500 or more issuer-paid credit ratings, with each new ratings action to be reflected in such histories no later than six months after they are taken; and (d) Furnish the SEC with an additional annual report.		
SEC Rule Amendments Removing References to Ratings of NRSRO from SEC Rules and Forms On October 5, 2009, the SEC adopted rule amendments that eliminated certain references to credit ratings issued by NRSROs in rules and forms under the Securities Exchange Act of 1934 related to the regulation of self-regulatory organizations and alternative trading systems and in rules under the Investment Company Act of 1940 that affect an investment company's ability to purchase refunded securities and securities in underwritings in which an affiliate is participating. These changes were made to reduce reliance on credit ratings in rules. In 2008, the SEC also proposed a series of rule changes that would eliminate certain other references to credit ratings issued by NRSROs in various other rules and forms under the Exchange Act, the Securities Act of 1933, the Investment Company Act of 1940 and the Investment Advisors Act of 1940 that rely on NRSRO ratings. These additional proposals have not yet been adopted.	The rules became effective on November 12, 2009.	
New SEC Rules on Rating Agency Disclosure and Conflicts of Interest Requirements On November 23, 2009, the SEC adopted rule amendments which impose additional disclosure and conflict of interest requirements on NRSROs. The amendments provide that: (a) Each NRSRO must make and keep publicly available on its corporate Internet Web site in an XBRL format the ratings actions histories for 10 percent of the ratings in each class for which it is registered and for which it has issued 500 or more credit ratings paid for by the issuer, underwriter, or sponsor of the security being rated. New ratings actions are required to be disclosed no later than six months after the action is taken; (b) Each NRSRO must make publicly available on its corporate Internet Web site the ratings action histories for all types of credit ratings initially determined by the NRSRO on or after June 26, 2007 whether issuer-paid, subscriber-paid or unsolicited. New ratings actions are required to be disclosed no later than 12 months after the action is taken for issuer paid ratings and no later than 24 months for non- issuer paid ratings actions; and (c) NRSROs that are hired by issuers, sponsors or underwriters (arrangers) to determine an initial credit rating for a structured finance product are required to (i) disclose to non-hired NRSROs that the arranger is in the process of determining such credit rating and (ii) obtain representations from the arranger that the arranger will provide information given to the hired NRSRO to the non-hired NRSRO.	The rule amendments became effective on February 2, 2010.	Compliance with the rule amendments begins on June 2, 2010.

CREDIT RATING AGENCIES

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
Proposed SEC Rule Imposing Additional Requirements on NRSROs to Increase Transparency and Disclosure, Diminish Conflicts and Improve Rating Quality On November 23, 2009, the SEC proposed amendments and a new rule that would require an NRSRO to: (a) Furnish a new annual report describing steps taken by the firm's compliance officer with respect to compliance reviews, material compliance matters and identification of the persons within the NRSRO advised of the results of the reviews; (b) Disclose additional sources of revenues; and (c) Make publicly available a consolidated report containing information about revenues attributable to persons paying the NRSRO for the issuance or maintenance of a credit rating. The SEC also deferred consideration of a proposal that would have required an NRSRO to include, each time it published a credit rating for a structured finance product, a report describing how the credit ratings procedures and methodologies and credit risk characteristics for structured finance products differ from those other types of rated instruments, or, alternatively, to use distinct ratings symbols for structured finance products that differentiated them from the credit ratings for other types of financial instruments.	The comment period closed on February 2, 2010. The SEC will consider the comments it received in deciding whether or not to adopt a rule change.	The SEC has not publicly signaled a timeframe for adoption of this proposed rule.
Proposed SEC Rule Mandating Disclosure of Credit Ratings Used in Public Offerings of Securities On October 7, 2009, the SEC proposed a new rule that would require issuers to make disclosures about their credit ratings in prospectuses for registered public offerings of securities if they use a credit rating to market their securities. The proposed rule would apply to registered public offerings by domestic issuers, foreign private issuers and closed-end funds. Information required to be disclosed includes: the identity of the rating agency and the assigned rating; the relative rank of the credit rating within the agency's classification system; the date the rating was assigned; the identity of the party that is compensating the rating agency; a description of non-rating services provided by the rating agency or its affiliates to the issuer or its affiliates; all material limitations on the scope of the rating; and, a description of any preliminary rating received by or on behalf of the issuer from any rating agency other than the rating agency providing the rating that is being disclosed. Once the proposed credit ratings disclosure has been triggered, the proposed rule would require issuers to update the disclosure if the rating agency changes or withdraws a previously disclosed rating. See our client publication, "SEC Proposes Mandatory Credit Ratings Disclosure" dated December 2, 2009.	The comment period closed on December 14, 2009. The SEC will consider the comments it received in deciding whether or not to adopt a rule change.	The SEC has not publicly signaled a timeframe for adoption of this proposed rule.
SEC Concept Release on Subjecting Credit Rating Agencies to Liability under the Securities Act as Experts On October 7, 2009, the SEC announced that it is considering subjecting NRSROs to potential liability under the Securities Act as experts when an issuer uses a credit rating that they provide in a registration statement by rescinding Rule 436(g) under the Securities Act.	The comment period closed on December 14, 2009. The SEC will consider the comments it received in deciding whether or not to adopt a rule change.	The SEC has not publicly signaled a timeframe for action on this concept release.
The House of Representatives The House of Representatives passed H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009 (the "House Bill") on	The House Bill was passed in December 2009.	The House Bill was passed. If and when a corresponding bill will be passed by the

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MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
December 12, 2009. The House Bill provides certain provisions designed to (i) prevent conflicts of interest among credit rating agencies; (ii) require increased transparency and disclosure; and (iii) provide increased SEC authority and supervision. Some of the key highlights include: (a) Requires an annual SEC review of the credit agencies' ratings issued, and the policies, procedures, and methodologies employed; (b) Requires that each rating agency have at least one-third, but no less than two members, of its board of directors be independent; (c) Creates a private right of action to a purchaser of a security given a rating by an NRSRO. The purchaser will have the right to recover for damages if the process of determining the credit rating was (1) grossly negligent, based on the facts and circumstances at the time the rating was issued; and (2) a substantial factor in the economic loss suffered by the investor; (d) Prohibits or requires the management and disclosure of conflicts arising from the way a rating agency is paid, its business relationships, affiliations or other conflicts; (e) Mandates that each rating report must disclose the fees paid by the issuer for a particular rating, as well as the total amount of fees paid by the issuer to the rating agency in the previous two years; (f) Requires each rating agency to designate a compliance officer – reporting directly to the board or the senior officer of the firm – with direct responsibility over compliance with internal controls and processes. The compliance officer will not be allowed to engage in any rating activities, marketing, sales, or setting of compensation; and will be required to submit a report annually to the SEC; (g) Establishes a dedicated office within the SEC to strengthen supervision of rating agencies and to carry out the enhanced regulations required; (h) Mandatory registration for all credit rating agencies; and (i) Credit rating agencies must disclose, on a delayed basis, ratings history information for 100 percent of all issuer-paid credit ratings.		Senate is unknown.
The Senate On March 15, 2010, U.S. Senate Banking Committee Chairman Christopher Dodd issued his proposed "Restoring American Financial Stability Act 2010" (the "Senate Bill") for U.S. Senate consideration. The Senate Bill was approved by the Senate Banking Committee on March 22, 2010 and introduced to the full Senate on April 15, 2010. The Senate Bill contains provisions designed to give the SEC increased powers of regulation with respect to, and requiring increased transparency in connection with, the generation of credit ratings. Some of the key highlights include: (a) Requires nationally recognized statistical rating organizations (NRSROs) to develop, maintain, enforce and document an internal control structure and file an annual internal controls report with the SEC; (b) Prohibits an NRSRO compliance officer from performing credit ratings, taking part in sales or marketing, developing rating methodologies or setting compensation levels for NRSRO employees;	The Senate Bill was approved by the Senate Banking Committee in March 2010. The full Senate will debate and offer amendments to the Senate Bill. If the Senate passes a bill, then it would be considered by the House of Representatives to deal with differences from the House Bill or be sent to a conference of the House of Representatives and Senate for final resolution.	The SEC is required to issue final regulations not later than one year after the date of its enactment, unless different timing is specified.

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MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
(c) Prohibits the sales and marketing considerations of an NRSRO from influencing its ratings (the SEC may exempt small NRSROs from this prohibition); (d) Requires each NRSRO to file an annual report with the SEC on its compliance with the securities laws and the policies and procedures of the NRSRO, including a description of any material changes to the code of ethics and conflict of interest policies of the NRSRO; (e) Directs the SEC to issue rules with respect to the procedures and methodologies used by NRSROs to ensure that they are approved by the board of the NRSRO and to require notification to the SEC when the procedures and methodologies are changed; (f) Requires public disclosure of information on the initial credit rating determined by an NRSRO for each type of obligor, security and money market instrument that it rates, and any subsequent change to such credit ratings; (g) Requires NRSROs to develop an SEC approved form to accompany the publication of each credit rating that contains qualitative and quantitative information about the credit rating; (h) Requires an NRSRO to consider information from sources other than the issuer if it finds such information credible and potentially significant to the credit rating; (i) Requires an issuer or underwriter of any asset-backed security to make publicly available the findings and conclusions of any third-party due diligence report that it obtains, and requires the person providing the due diligence services to provide a written certification to any NRSRO producing a rating to which such services relate; (j) Requires each NRSRO to have written policies and procedures that assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security; (k) Requires NRSROs to clearly define and disclose the meaning of any symbol used and to apply any such symbol consistently for all types of securities and money market instruments for which it is used; (l) Requires the SEC to issue rules designed to ensure that NRSRO employees meet standards of training, experience and competence necessary to produce accurate credit ratings and to be tested for their knowledge of the credit rating process; (m) Broadens the SEC's enforcement power to impose fines on NRSROs under the Exchange Act and to temporarily suspend or permanently revoke the registration of an NRSRO with respect to a particular class or subclass of securities; (n) Extends the enforcement and penalty provisions of the Exchange Act to apply to statements made by a credit rating agency in the same manner and to the same extent as such provisions apply to statements made by a registered public accounting firm or a securities analyst under the securities laws; (o) Provides that statements of a credit rating agency will not be deemed forward looking statements for the purpose of the safe harbour provided by Section 21E of the Exchange Act;		

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MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
(p) Modifies the state of mind requirement in a securities fraud action brought for monetary damages against a credit rating agency under Section 21D(b)(2) of the Exchange Act; (q) Establishes an Office of Credit Rating staffed by persons with expertise in corporate, municipal and structured debt finance; and (r) Requires each NRSRO to have a board of directors, at least half of which, and not fewer than two members thereof, being independent of the NRSRO.		
INTERNATIONAL		
IOSCO Code In May 2008 a revised version of the "Code of Conduct Fundamentals for Credit Rating Agencies", replacing the December 2004 version, was published which addresses some of the issues that arose as a result of the financial crisis regarding how credit ratings for structured products are developed by CRAs and relied upon by issuers and investors. In March 2009 IOSCO published a note in which it recognized that some jurisdictions were considering ways to regulate CRAs, and expressed concern about possible fragmentation in the supervision of CRA activities given that the largest CRAs operate internationally. In order to address this issue IOSCO, (a) converted the *ad hoc* CRA Task Force into a permanent standing committee; (b) developed a confidential model examination module for authorities to use when inspecting a CRA's compliance with the IOSCO Code; and (c) decided to facilitate cross-border cooperation among regulators and between the industry and regulators.		

SECURITY HOLDINGS AND DISPOSITIONS

MAIN PROPOSALS	NEXT STEPS	EXPECTED TIMEFRAME
EUROPEAN UNION		
Following a call for EU-wide harmonization of certain areas of law and the preparation of EU legislation in this area, the European Commission issued a consultation paper in April 2009 which included proposals on the following: (a) Required authorization of all firms carrying out the activity of maintaining securities accounts (fills regulatory gap in MiFID); (b) Obligation on account providers to assist investors in exercising rights flowing from securities, including the provision of certain information; (c) Exercise of rights of investors by account providers in certain circumstances; (d) Choice of issuer as to where securities are initially held; (e) Protection of account provider in event of insolvency; (f) Harmonization of the identification of applicable law, including uniform conflicts of laws rules for issues; (g) Legal position of acquiring account holder to comprise set of legal attributes: minimum content; (h) Fixed set of methods of acquisition and disposition of securities or at least recognition by all Member States of all methods in event of insolvency; (i) List of conditions giving rise to reversal of an acquisition or disposition; and (j) Harmonization of priority of interests between market participants.	The consultation closed in June 2009. Currently, the European Commission and Member States are considering responses to the consultation with a view to issuing a further consultation paper in March/April 2010. According to the Commission's website, the Commission is also currently preparing a draft Directive on legal certainty of securities holding and transactions.	The European Commission intends to present draft legislation by mid-2010 and for legislation to be finalized in mid-2011 with transposition into Member States' law by the end of 2012.
UNITED KINGDOM		
There are no new proposals in this area at present. Once the European initiatives in this area have developed further we expect UK proposals to be made.		
UNITED STATES		
There are no new proposals in this area at present.		
INTERNATIONAL		
There are no new proposals in this area at present.		

This Client Publication is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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