

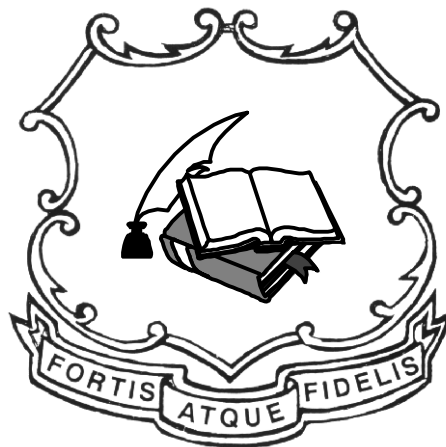
THE COMPLIANCE DIGEST

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**THE INTERNATIONAL JOURNAL FOR COMPLIANCE
PROFESSIONALS IN THE FINANCIAL SERVICES INDUSTRY**

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PRESS RELEASE

THE 2008 COMPLIANCE REGISTER OStCaR AWARDS

The Compliance Register welcomes Tim Herrington, Chairman of FSA's Regulatory Decisions Committee as Special Guest of Honour to this year's OStCaR Awards.

The Compliance Register is pleased to announce that a Special Award "The Compliance Register Personality of the Year" will be introduced at The 2008 OStCaR Awards scheduled for 8 December at London's Landmark Hotel.

This new Award is unique and the shortlist of two candidates will be decided by online voting by the industry. The shortlist will then be voted by the live audience at The OStCaRs. This Award is intended to give recognition to those individuals who have made a difference to our industry through, for example, product innovation, technical advances, community service, etc.

Ben Goh, Secretary of The Compliance Register, said:-

"The OStCaR Awards, now in its fifth year, continues to be at the cutting edge of innovation. We are pleased to welcome *Financial Adviser* as our media partner for this year's Awards and to work with us in reaching out to the industry. The Personality of the Year Award is an important development as, I am sure, there are many unsung heroes who hitherto had not gained recognition. Throughout the year, many acts of innovation, kindness and charity are done by people in the financial services industry and it is time their efforts are recognised."

Ends.

CHANGING COVER DATES

This issue will be the last in which the label will reflect the actual developments in a particular month. Starting from the January 2009 issue, we will be publishing The Compliance Digest monthly in arrears (as now) – the only change is in the label. Each issue will be labelled according to the month in which it is published – so, for example, the January 2009 issue will be published in that month but covering the developments in December 2008. We believe this change is for the better and brings it in line with publishing industry practice.

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SUMMARY OF UK REGULATORY DEVELOPMENTS

By Ben Goh

Below is a summary of the FSA regulatory developments for November and October in descending date order. This summary is provided with the objective of assisting readers in quickly finding the items that are of relevance to their professional needs.

November	Nature of Publication	Description and Commentary
30	First Supervisory Notice	The FSA has required London & Scottish Bank Plc from accepting any deposits into any existing or new deposit accounts. The firm is failing to meet Threshold Condition 4 regarding adequate resources.
28	FSA Statement.	Lord Lipsey has resigned as chairman of the Financial Services Consumer Panel. Lord Lipsey had proposed a much wider remit, with a role across a wide lobbying agenda supported by greatly increased resources. The other members of the Panel nor the FSA believe that the proposed changes were appropriate.
28	Miscellaneous	FSA clarifies ICOB requirement to disclose total premium for Regular Premium Insurance Policies.
28	Press Release and Dear CEO letter	FSA asks mortgage lenders to review arrears and repossessions practice.
27	Consultation Paper	FSA publishes CP08/20 on proposed changes to the prudential requirements for Personal Investment Firms.
27	Press Release	FSA is introducing a rule change which will enable a building society which merges with another to keep its separate compensation limit. This follows recent concern that customers with savings in two merging societies may find that, as a result of the merger, they are over the £50,000 maximum limit.
27	Handbook	Handbook Development Newsletter 105.
25	Speech by Philip Robinson	The FSA's agenda for combating financial crime in 2009.
25	Final Notice	FSA cancels the authorisation of Jem Insurance Services. The firm had repeatedly failed to submit Retail Mediation Activities Returns promptly or at all.
25	Final Notice	FSA cancels the permission of Matthew John Green to carry on regulated activities as no such activities have been carried out for over twelve months.
25	Speech by Jon Pain	The Retail Distribution Review – the key to our retail strategy.
25	Speech by Adair Turner	Delivering change in the retail market.

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25	Feedback Statement	FS08/6 – Retail Distribution Review including feedback on DP07/1 and the Interim Report. The FSA’s proposals seek to establish a new level of consumer trust and confidence.
25	Report by Deloitte & Touche	Costing Intermediary Services.
25	Report by Volterra Consulting	The market for Basic Advice.
25	Consumer Research	For papers were published as part of the RDR review.
21	Final Notice	FSA cancels the authorisation of Salman Ahmed Khan trading as Salman A Khan.
21	Press Release	FSA confirms the merger of Derbyshire Building Society with the Nationwide Building Society.
21	Press Release	FSA bans insurance agents Stephen Fryett and Richard Baines from performing any role in relation to regulated financial services activities. Fryett acted as director of CIC Greece and was also involved with CIC Costa Rica both of which were not authorised to carry out insurance business in the UK. Baines was director of Insureyourshop.com Limited and had knowingly issued CIC policies to UK businesses. Their conduct displayed a serious lack of integrity and honesty.
20	Speech by Michael Knight	The Continuing Obligations Regime for listed companies.
19	Press Release	FSA welcomes FSSC work on setting and raising standards. The FSSC published guidance on good practice for Training & Competence.
19	Press Release	The FSA prohibits Roger Muse and Daniel Muse for three years from performing any significant influence functions. The ban was imposed following their failure to ensure compliance with the client money rules.
18	Statement	Simon Robert Gray has been sentenced to 18 weeks imprisonment (suspended for 18 months) for making misleading statements and using forged documents in repeated applications to be an FSA approved person. This is the first time that the FSA has prosecuted an individual for providing false information in an application for approval or authorisation.
18	Speech by Sarah Wilson	TCF – what “good” looks like.
18	Press Release	FSA bans Peter King and his firm New Forest Mortgage Company Limited for knowingly submitting fraudulent applications for life assurance policies in order to benefit for commission payments.

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17	Miscellaneous	Credit write-backs – an articulation of FSA’s position.
17	Miscellaneous	Survey of Persistency of Life and Pensions policies.
14	Statement	Capital Approach utilised in UK Bank Recapitalisation Package.
13	Speech by Lesley Titcomb	The challenges facing mortgage intermediaries.
13	Press Release	Richard Ralph, former British ambassador to Peru and former chief executive of Monterrico Metals Plc has been fined nearly £118,000 for market abuse. His friend, Belgian businessman Filip Boyen was fined nearly £82,000. Both had dealt in the shares of Monterrico on the basis of inside information.
12	Press Release	FSA announces Merger confirmation hearing re: Cheshire Building Society and Nationwide Building Society to be held on 20 November in Macclesfield..
12	Press Release	FSA concludes review of insurance comparison websites.
12	Press Release	FSA statement on TCF initiative.
11	Statement	FSA statement on regulated covered bond schemes.
11	Press Release and Final Notice.	FSA fines AWD Chase de Vere Wealth Management £1.12 million for serious failings in its pension transfer, pension annuity and income withdrawal business.
10	Speeches by Margaret Cole and Jonathan Phelan	International Boiler Room Conference. FSA calls for greater international cooperation to tackle boiler room scams.
10	Occasional Paper	Financial Capability and Psychological Well-being.
10	Final Notice	FSA de-authorises Global Mortgage Link Limited for failing to pay fees of £1,416.32 owed to the FSA.
06	Speech by Sarah Wilson	Capital, risk and strategy – the regular’s vie of life insurance.
06	Undertaking	Abbey Life Assurance Company has given undertakings in order to comply with the Unfair Terms in Consumer Contracts Regulations 1999.
05	Speech by Sarah Wilson	The future of general insurance.
05	Press Release	FSA bans mortgage brokers Edward Allen and Ronald Allen of Homeplan Finance UK Limited for failures which exposed customers to the risk of receiving an unsuitable mortgage. Both of them lacked the competence and capability to ensure that they delivered good quality advice on mortgages. These failings would have incurred a fine of £15,000 but in view of their financial circumstances, the fine was not imposed.

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05	Final Notice	FSA cancels the authorisation of Rukhsana Malik trading as Greenacre and also imposes an order prohibiting the undertaking of any regulated activity.
04	Final Notice	FSA cancels the authorisation of Accepted 4 Credit Limited for failure to submit the RMAR for the period ended 31 January 2008.
04	Final Notice	FSA cancels the authorisation of Xcaveo Limited for failure to submit the RMAR for the period ended 31 January 2008.
04	Final Notice	FSA cancels the authorisation of Homeplan Finance UK Limited.
04	Consultation Paper	CP08/19: Regulating retail banking conduct of business.
04	Policy Statement	PS08/11 – FSCS funding – tariff changes.
03	Final Notice	FSA cancels the authorisation of Reginald Wapling trading as Bower Insurance Consultants for inadequate resources and failure to submit the RMAR.

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October	Nature of Publication	Description and Commentary
30	Newsletters	Handbook Development 104.; Market Watch 29.
30	Consultation Paper	Regulatory Fees and Levies.
30	Handbook Publication	Handbook Notice 82.
29	Speech	Sarah Wilson on TCF and With-Profits insurance policies.
29	Press Release and Final Notices	Sindicatum Holdings Limited and its MLRO Michael Wheelhouse fined £49,000 and £17,500 respectively for not having adequate AML systems and controls. This is the first time that an MLRO has been personally fined by the FSA.
28	Speech	Thomas Huertas on The Supervision of Financial Services: What's Next?
27	Statement	A former mortgage adviser, Simon Robert Gray, has pleaded guilty to 5 offences of providing misleading information to the FSA and 4 offences of using a false instrument contrary to section 3 of the Forgery and Counterfeiting Act 1981.
29	Press Release and Final Notice	Neil McKay of Ideal Insurance Services Limited has been banned from undertaking controlled functions by the FSA. He had failed to disclose in his application to be an approved person that he had been convicted in 1996 of eight counts of obtaining property by deception and sentenced to eight months imprisonment. At Ideal, he had failed to pass on premiums thereby putting customers at risk of not being insured. Ideal's authorisation has also been terminated by the FSA.
23	Press Release and Consultation Paper	Feedback Statement on Disclosure for Contracts for Differences. The Statement contains draft rules to implement disclosure requirements for long CfD holdings and further technical consultation.
22	Speech	Hector Sants on the FSA's view of hedge funds and their standards.
22	Press Release	Public statement on the 30-day review of the FSA's short selling measures in the Code of Market Conduct. The review made one change – once disclosure of a short position has been made, additional disclosures will only be required when the position changes.
20	Press Release	Free financial guide from FSA to be made available to expectant parents.
16	Final Notices	FSA regulatory notices issued against Brian Valentine Taylor, Stewart McKegg and Paul Warner.

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16	Statement	The Market-Wide Exercise 2008 for Financial Sector Continuity rescheduled for 2009 in the light of global market conditions.
16	Press Release	FSA and HMT launch Moneymadeclear campaign.
16	Final Notice	Orchid Financial Limited fined £34,500 for failing to ensure suitable mortgage advice is given to customers..
16	Final Notice	William John Evans and Gary Howes, directors of Abbey Mortgages Limited, have each been fined £30,000 by the FSA for shortcomings in their business thereby putting vulnerable customers at risk and the firm at risk of being used for mortgage fraud. Abbey has also being publicly censured by the FSA.
15	Speech	Sally Dewar on the challenge for compliance.
15	Speech	Hector Sants on the role of regulation in facilitating the development of entrepreneurship.
14	Final Notice	Lucky Albert, trading as Economic Mortgage, has been de-authorised by the FSA for, inter alia, repeated failure to submit RMARs promptly.
14	Speech	Hector Sants on Financial Stability.
13	Speech	Adair Turner on The Future Shape of Global Finance.
13	Dear CEO Letter	Remuneration policies – the need for such policies to be consistent with sound risk management.
13	Statement	Statement by HM Treasury on financial support for the banking industry.
10	First supervisory notice	FSA regulatory notice against Landsbanki Islands hf.
09	Final Notices	FSA regulatory notices issued against (1) Delroy Anglin; (2) Derrick Hales Financial Planning; (3) Derrick Hales; (4) Kathleen Hales; and (5) Knowlden Titlow Financial.
08	Briefing Note	Joint FSA/EUI announcement re: Lehman Brothers International's administration.
08	Statement	FSA Statement re: Lehman Brothers – outstanding settlement transactions.
08	Press Release	Merger Confirmation Hearing of Derbyshire and Nationwide Building Societies.
08	Statement	FSA welcomes Government measures to support the banking system.
08	First supervisory notice	FSA regulatory notice against Kaupthing Singer & Friedlander Limited.
08	Newsletter	LIST! Number 19.
07	First supervisory notice	FSA regulatory notice against Heritable Bank Plc.
07	Press Release and Final Notice	Alliance & Leicester plc fined £7 million for PPI failings..
06	Final Notice	FSA regulatory notice against Edward Johnson.

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06	Consultation Paper	CP08/16 Quarterly Consultation number 18.
03	Press Release	Compensation limit increased to £50,000 for bank deposits.
03	Consultation Paper	CP08/15 Review of Compensation Scheme limits.
03	First supervisory notice	FSA regulatory notice against Platinum Estates and Mortgages Limited.
02	Press Release and Final Notice	TBO Investments Limited fined £28,000 by FSA for failing to clearly document the explanation of the risks of transactions to clients and to maintain records to demonstrate suitability.
01	First supervisory notice	FSA regulatory notice against Synergys Ethical Limited.

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INTERNATIONAL REGULATORY DEVELOPMENTS (October 2008)

By Emma Radmore (Senior Solicitor) and Kate Crowley (Paralegal)

EUROPEAN UNION

European Commission

Commission updates CRD proposals

The Commission has announced the next steps towards Capital Requirements Directive (CRD) revision. Under new proposals:

- banks will be restricted in lending beyond a certain limit to any one party. As a result, in the inter-bank market, banks will not be able to lend or place money with other banks beyond a certain amount, while borrowing banks will effectively be restricted in how much and from whom they can borrow. The Commission wants to limit all inter-bank exposures to the higher of 25% of own funds or €150 million;
- "colleges of supervisors" will supervise banking groups that operate cross border within the EU. The Commission had suggested a non-binding co-operation mechanism, but this was not popular with stakeholders, so the proposals introduce a greater eventual responsibility for the consolidating supervisor. The colleges will also co-ordinate liquidity risk management for these banks;
- there will be clear EU-wide criteria for assessing whether "hybrid" capital counts as part of bank capital; and
- originators will be required to keep some risk exposure to these securities, while firms that invest in the securities will be allowed to make their decisions only after conducting comprehensive due diligence. If they fail to do so, they will be subject to heavy capital penalties. Charlie McCreevy, Internal Markets Commissioner, highlighted the need for banks to take responsibility for assessing assets they invest in and not just rely on Credit Rating Agencies (CRAs) or anyone else. It is critical all players in a securitisation can understand and explain what is on offer.

Charlie McCreevy welcomed the measures and said it is critical that supervisors work together especially in times of financial turmoil. The proposal, if adopted, will amend the recast CRD and Capital Adequacy Directive (CAD) in respect of banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements and crisis management. The Commission plans for Member States to transpose the changes by the end of January 2010 and bring their implementing laws into force by 31 March 2010.

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Commission approves B&B State Aid

The Commission has approved the UK's package of measures to rescue Bradford & Bingley.

Commission to hold MiFID conference

The Commission has announced a conference in Brussels on 13 November looking at Markets in Financial Instruments Directive (MiFID) one year on.

Commission to give guidance on bank help

Commissioner Neelie Kroes announced the Commission will soon give guidance to Member States to help quick assessment of state aid applications when States want to help capitalise banks or give guarantees. She cited the Danish and Irish experiences as evidence of how good communication between Member States and the Commission can help speed up decisions.

Commission to hold MAD conference

The Commission will hold a conference on Market Abuse Directive (MAD) on 12 November in Brussels.

Commission on the conference circuit

Charlie McCreevy has spoken on:

- the success of MiFID, and the progress and challenges of Single European Payments Area (SEPA) and the Payment Services Directive (PSD); and
- current EU initiatives and the importance of financial institutions beginning to rely on each other again.
- private equity: he spoke on the pressures on the Commission to legislate about private equity funds. Parliament has made several recommendations for the Commission to consider before it decides whether to propose legislation; and
- the future structure of supervision: he looked at a "Lamfalussy follow up", including showing how the EU can react quickly to crises. He said the Commission planned to propose an increase in minimum compensation under deposit guarantee schemes following Member States' action to increase them anyway. He also mentioned the need to update accounting rules to give EU banks the same flexibilities as US banks.

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Charlie McCreevy has also spoken on why more derivatives should be standardised. He says the Over the Counter (OTC) marketplace is so large and important that it means it must have the right counterparty clearing, particularly in the credit default swaps (CDS) market. He spoke also on challenges for corporate governance, including the current spotlight on remuneration.

Commission approves rescue packages

The Commission has approved under State Aid rules the most recent initiatives from UK and Ireland. It has also given guidance to Member States on the type of measures that might be appropriate. Ireland had made changes to its proposals following help from the Commission to meet EU concerns.

Commission publishes State aid and guarantee summary

The Commission has published a table setting out what each EU Member State has done (if anything) in giving State aid and increased deposit guarantees. The table doesn't include EEA non-EU countries.

Commission publishes crisis FAQs

The Commission has also published some frequently asked questions (FAQs) on its views on the crisis and its role now. Also, President Barroso and Prime Minister Fillon met European Social Partners to discuss the financial crisis.

Commission plans deposit protection increase

The Commission has set out proposals to increase minimum protection for bank deposits to €100,000, and to reduce the payout period from three months to three days. It has also published a set of FAQs on the proposals.

Commission tables e-money changes

The Commission has proposed changes to the e-money Directive, after a review of the current rules. To move with the times, it proposes:

- a technologically neutral and simpler definition of electronic money;
- a new prudential regime to achieve more consistency between treatment of e-money institutions and payment institutions under the PSD; and
- to clarify redemption requirements.

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FAQs accompany the proposal.

Commission plans extension of rules on cross-border euro payments to direct debits

The Commission has published proposals to extend the current rules on equality for cross-border euro payments to include also direct debits. It wants to amend the existing Regulation from November 2009.

Commission looks at Consumer Rights Directive

The Commission has published a set of FAQs on the new Consumer Rights Directive. Many activities relating to financial services are not covered (because, for instance, they are covered by the Distance Marketing of Financial Services Directive (DMD)) but the rules on unfair contract terms, mortgages or other real estate loans negotiated "off premises" apply.

Commission takes infringement actions

The Commission is referring Belgium, Ireland, Spain and Sweden to the European Court of Justice (ECJ) because they did not implement Third Money Laundering Directive (3MLD) on time. Also, Belgium, the Czech Republic, Greece, Poland and Portugal have not implemented the Reinsurance Directive (RID).

Commission approves national schemes and updates on State Aid

The Commission has approved a State Aid scheme from Germany that will provide capital and guarantees to eligible institutions. It has also approved schemes from Sweden and Portugal. It also announced the EU is to participate in a package with International Monetary Fund (IMF) to help Hungary. Finally, the Commission has updated its communications on how State Aid works and what it will allow states to do.

European Central Bank (ECB)

ECB updates on temporary new collateral measures

European Central Bank (ECB) has published technical details of the temporary expansion of collateral arrangements.

ECB looks at wider custody arrangements

ECB has approved new custody arrangements for debt securities to start operating in 2010.

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ECB changes monetary policy

ECB has adopted a new guideline on implementation of monetary policy in the euro area. The changes from the previous guideline relate to risk control measures and minimum reserve requirements. It also adopted as a Regulation the liquidity and collateral measures it agreed earlier in October, with a new guideline that will come into force once all Eurosystem members have adapted the monetary policy documentation.

ECB announces Danish measures

ECB has announced a swap line with the Danish national bank to provide euro liquidity.

Finance ministers reiterate support

ECB has published a statement by G-7 finance ministers and central bank governors reaffirming their shared interest in a strong and stable financial system.

Committee of European Securities Regulators (CESR)

CESR responds on IASB

Committee of European Securities Regulators (CESR) has published three letters it sent to European Financial Reporting Advisory Group (EFRAG) commenting on EFRAG's:

- draft endorsement advice on International Financial Reporting Standards (IFRS) 3 Business Combinations and International Accounting Standards (IAS) 25 consolidated and separate financial statements;
- draft comment letter on the International Accounting Standards Board (IASB) exposure draft on "an improved conceptual framework for financial reporting"; and
- draft comment letter on IASB discussion paper on reducing complexity in reporting financial instruments.

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CESR consults on UCITS management company passport

CESR is consulting on critical aspects of the proposed Undertakings for Collective Investments in Transferable Securities (UCITS) management company passport. The Commission wants CESR to advise it on how it can be sure investors in funds managed cross border will not be subject to any more risks, or given any less regulatory protection, than investors in domestically managed UCITS. The consultation covers:

- definition of domicile and how to distinguish the home Member State of the management company, depository and UCITS;
- applicable law and analysis of supervisory requirements, and how to allocate them between the relevant authorities;
- authorisation procedure for UCITS funds whose management company is established in another Member State;
- on going supervision of the management of the fund, including effective information exchange and co-operation between supervisors; and
- dealing with breaches of rules governing the management of the fund.

CESR asked for comment by 15 October, as it needed to send its advice to the Commission by 1 November.

CESR finalises energy market abuse advice

CESR and European Regulators Group for Electricity and Gas (ERGEG) have finalised their advice to the Commission on market abuse issues related to energy trading. They recommend a tailored market abuse framework for electricity and gas products that do not fall under MAD, and ask the Commission also to consider other energy and related products similar to these traded products. They want the regime backed up with a strong disclosure requirement. The committees have also published feedback on their original consultation.

CESR reports new steps to deal with crisis

On 1 October, CESR published a list of the market activities it is keeping under constant review. Its list includes looking at further convergence of short-selling rules, operation of investment funds and co-ordinating data on investors affected by the Lehman collapse.

CESR publishes post-trading responses

CESR has published the 14 responses it received to its consultation on regulatory arrangements for post-trading infrastructure.

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CESR releases eligible investments guidelines

CESR has published an amended version of its 2007 guidelines on eligible investments for UCITS. The new version clarifies the ban on physical short-selling, whether or not backed by stock borrowing.

CESR publishes statement on fair value measurements

CESR has published a statement on fair value measurement and related disclosures of financial instruments in illiquid markets. It stresses the importance of proper application of measurement and disclosure requirements.

CESR consults again on MAD Level 3

CESR has drafted guidance on the final part of its work on MAD Level 3. This guidance covers stabilisation and buy-backs and the "two-fold notion" of inside information. It has also published the responses it received to its previous consultation in this series, on insider lists and Suspicious Activity Reports (SARs). CESR wants comments on its guidance and specific questions it asks by 9 January 2009.

CESR consults on Indian GAAP

CESR is consulting on advice on the equivalence of Indian General Accepted Accounting Practices (GAAP). It wants comments quickly, by 24 October, so it can report to the Commission in early November.

CESR briefs on conduct of business issues

CESR has published a series of supervisory briefings, covering:

- conflicts of interest;
- best execution; and
- inducements.

It wants the briefings to help supervisors understand these critical aspects of MiFID and to work alongside existing FAQs.

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CESR and CEBS publish commodities advice

CESR and Committee of European Banking Supervisors (CEBS) have published their advice to the Commission on the Commission's review of commodities business. The committees think there is a risk of market and regulatory failures. They are worried that regulation of commodity derivatives business is not consistent with other financial regulation or between countries. The advice makes recommendations in particular on the future scope of the MiFID exemptions for and the prudential treatment of specialist commodity derivatives firms. They would narrow the exemptions in Article 2(1)(i) and (k) of MiFID. Instead they suggest a narrow exemption for the incidental provision of investment services related to commodity derivatives and an exemption for primarily non-financial firms which trade on own account with sophisticated clients and to ensure a level playing field. They also think the Commission should consider whether firms covered by the exemptions relating to commodity derivatives could be authorised as investment firms if they wanted. On prudential treatment, the Committees suggest alternatives:

- requiring specialist commodity derivatives firms to meet a high-level requirement to have adequate financial resources and qualitative risk management requirements; or
- full application of the CRD to specialist commodity derivatives firms with an exemption from any prudential requirements for firms where this would not impede the overall aims of prudential regulation.

The 3L3 report on payer transfer information

CESR, CEBS and Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) have published their common understanding of European supervisors on information on the payer that goes with funds transfers to payment services providers of payees. Following implementation of the 2006 Regulation, Member States have noted incomplete incoming messages from many non-EU countries, including the US and Switzerland. The Level Three (3L3) Committees consulted earlier this year on a common understanding and have now suggested a practical solution for dealing with the problems. They have also released a feedback statement on responses to the consultation.

CESR publishes UCITS responses

CESR has published the responses it received to its consultations on the UCITS management company passport.

CESR publishes half-yearly report

CESR has published its 2008 half-yearly report. The report covers CESR's work linked to market turmoils and lessons the industry and supervisors can learn. The report looks at current workstreams and the work of the CESR expert groups.

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CESR publishes TOD responses

CESR has published a summary of the responses it received to its questionnaire on transposition of the Transparency Obligations Directive (TOD).

3L3 publish accounting development update

CESR, CEBS and CEIOPS have published a joint statement on how important it is to have consistent accounting rules. They also stated their support for IASB measures.

CESR and ERGEG consult on energy response

CESR and ERGEG are consulting on their draft response to the Commission in the context of the Third Energy Package. The advice looks at specific questions on:

- record keeping: it looks at what market participants and what instruments the requirements cover;
- transparency: it proposes two options on what data should be published. It should either be on the whole market or exclude products that fall within MiFID. It favours the whole market option; and
- exchange of information.

Where appropriate, the advice cross-refers to MiFID requirements, and how proposals tie in with existing requirements for firms that fall under MiFID. It asks for responses by 24 November.

CESR and ESCB publish settlement and counterparty recommendations

CESR and the European System of Central Banks (ESCB) are consulting on recommendations to increase the safety, soundness and efficiency of securities clearing and settlement systems and central counterparties. Part 1 of the consultation paper contains 19 recommendations, which deal with central securities depositaries (CSDs), and Part 2 contains 15 recommendations regarding central counterparties (CCPs). The recommendations are for use by regulators. CESR and ESCB will hold a public hearing in Paris on 9 December and want comments by 23 January 2009.

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Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)

CEIOPS responds on IASB issues

Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) has responded to IASB's recent discussion papers. It stresses the importance of the challenges of applying the fair value principle and suggests some areas for further discussion. It also feels IASB should give priority to completing a full standard for accounting for insurance contracts, and that this and the valuation project are more important than the project looking at financial instruments with characteristics of equity.

CEIOPS updates Commission on supervisory powers

CEIOPS has written to the Commission attaching the results of a questionnaire it sent its members looking at supervisory powers and objectives of national supervisors.

CEIOPS comments on recent developments

CEIOPS says recent turbulence has had limited impact on European insurance companies and pension funds. It says the European insurance market is strong, but it noted a small Japanese insurer had failed. It urged investors not to overreact, particularly because it knows insurers and pension funds are major investors in equities.

CEIOPS reports on QIS4

CEIOPS has reported the results of a stakeholders' meeting that focused on preliminary results of its Solvency II QIS4 exercise.

CEIOPS hopes to learn from financial crisis

CEIOPS hopes lessons from the current crisis can be useful in preparations for Solvency II. It has always supported the risk-based approach and now hopes to use the financial crisis in preparation for Level 2 measures.

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Committee of European Banking Supervisors (CEBS)

CEBS looks at bank transparency

Committee of European Banking Supervisors (CEBS) has published a follow-up report that looks at banks' transparency in their half-year interim results. The report compares disclosures from 22 banks. The findings included that:

- around 80% of the banks gave detailed disclosure on the impact of the market turmoil and exposure levels; and
- disclosures on business models, risk management practices and accounting and valuation practices are not so detailed.

CEBS wants institutions to work to bring their disclosures into line with the good practices it set out in a report in June.

CEBS appoints new secretary general

CEBS has appointed Patrick Amis as its new secretary general.

CEBS publishes CRD option and discretion advice

CEBS has published its advice to the Commission on whether it should reduce the national options and discretions the CRD provides. Some options and discretions have time limits and will expire anyway. CEBS recommends reducing them even more, which would result in an 80% reduction in current discretions. CEBS would keep 28% of the current discretions and suggests solutions that would give better harmonisation for all other cases.

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CEBS members publish updates

CEBS has published a number of updates from its members on the financial markets in their countries. Latest updates include:

- the measures the Slovenian Ministry of Finance is taking to preserve the stability of Slovenian financial markets;
- assistance from the Swedish regulator for Carnegie Investment Bank, its programme for loans against collateral and its move to assist corporate funding;
- the Icelandic regulator's declaration of the Icelandic Deposit and Guarantee Fund becoming liable to pay out to Icesave depositors from 6 October (but announced only on 27 October) and other regulatory decisions;
- the Belgian regulator's plans for strengthening KBC; and
- arrangements for the Finnish branch of Kaupthing.

OTHER AUTHORITIES/ REGULATORS/ TRADE ASSOCIATIONS

Bank For International Settlements (BIS)/Basel Committee

Supervisors endorse BIS risk management principles

Banking supervisors have approved the Basel Committee's Principles for Sound Liquidity Risk Management and Supervision. The 17 Principles, which update a paper from 2000, deal with:

- the fundamental principle for the management and supervision of liquidity risk;
- governance of liquidity risk management;
- measurement and management of liquidity risk;
- public disclosure; and
- the role of supervisors.

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BIS looks at Asian issues

BIS has published working papers looking at:

- what local stock markets expected in terms of devaluation in the Asian crisis; and
- effectiveness of monetary policy communication in Indonesia and Thailand.

FSI publishes winning paper

The Financial Stability Institute (FSI) has published its 2008 Award-winning paper on stress testing credit risk. The paper looks at a comparison of the Czech Republic and Germany.

EFAMA responds on risk management

European Fund and Asset Management Association (EFAMA) has responded to CESR's consultation on risk management principles for UCITS. Its major comment was that CESR should clarify its use of the expression "risk management". It also made a number of specific comments.

Financial Action Task Force (FATF)

FATF releases guidance on dealings with Iran

Financial Action Task Force (FATF) has given guidance on how financial institutions should be vigilant if dealing with Iranian banks.

FATF holds plenary

The FATF plenary meeting highlighted the dangers to the financial system in several countries. It noted particularly Iran and Uzbekistan but also Turkmenistan, Pakistan and Sao Tome and Principe. It also agreed evaluations of Japan and Mexico and agreed guidance for lawyers, notaries and casinos on how to implement the risk-based approach.

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International Organisation Of Securities Commissions (IOSCO)

IOSCO applies principles to Islamic products

International Organisation Of Securities Commissions (IOSCO) has published a paper looking at how Islamic securities products can fit into its Core Principles. It finds no reasons these products should cause any concern. But its research showed some areas of the Principles might benefit from a re-assessment. In particular, it thinks more work could be done in areas such as information sharing, product classification and defining each regulator's attitude to regulating Sharia products.

IOSCO to look at commodities markets

IOSCO has set up a task force on commodities markets. The task force will concentrate on whether supervision is keeping up with developments and whether regulatory co-operation is working as well as it should.

IOSCO looks at funds of hedge funds

IOSCO is consulting on regulatory standards for funds of hedge funds. It wants to give maximum investor protection to the retail investors who increasingly invest in funds of hedge funds. The proposed standards concentrate on:

- liquidity risk; and
- due diligence.

IOSCO wants comments by 5 January 2009.

IOSCO forms emerging markets task force

IOSCO has set up a task force to assess the implications of the financial crisis in emerging market jurisdictions.

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International Securities Lending Association (ISLA)

Industry warns on short selling ban

International Securities Lending Association (ISLA) and other industry associations have warned regulators around the world the current short selling bans should be temporary and regulators should not let them damage liquidity of cash equity and related derivatives positions. The paper encouraged lenders to make financial shares available for lending.

International Swaps and Derivatives Association (ISDA)

ISDA publishes new CDS template

International Swaps and Derivatives Association (ISDA) has published a revised documentation template for CDS referencing the iTraxx®Lecx® index of European leveraged loans.

ISDA explains CDS

The ISDA CEO has called for a better understanding of how CDS work, as they have been blamed for playing a role in the financial crisis.

ISDA publishes Protocol timeline

ISDA has published a timeline showing when its Protocols are likely to be open for various failed institutions. Many of the dates are still indicative at the moment. ISDA has also hosted various conference calls to discuss aspects of the crisis.

ISDA launches Icelandic bank protocols

ISDA has launched protocols to settle CDS referencing Landsbanki, Glitnir and Kaupthing. The protocols were launched on 27 October and were open until 31 October.

Industry responds on Basel revisions

ISDA, London Investment Banking Association (LIBA), the Institute of International Finance and the International Banking Federation have responded to the Basel Committee's two recent consultations. Their main concern is with the proposals for the Incremental Risk Change framework.

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ISDA responds on IAS

ISDA has responded on the draft letter the Commission plans to send the IASB. It supports independent standard setting but is concerned there should be no jurisdictional carve-outs that would impair the brand.

ISDA pleased with Lehman settlement

ISDA is pleased at how the industry infrastructure for CDS worked in the context of the Lehman default and settlement. It also pointed out the misperceptions about the role of CDS in the financial crisis.

MARKETS AND CLEARING HOUSES

Euroclear

Euroclear cash settlement for UK funds goes live

Euroclear UK & Ireland and EMXCo announced the start of cash settlement for UK funds.

LCH Clearnet

DTCC and Clearnet to merge

The Depository Trust and Clearing Corporation (DTCC) and LCH.Clearnet are to merge. The merger will create the world's largest clearing house.

Eurex

Eurex supports McCreevy request

Eurex agrees with Charlie McCreevy that there should be improvements to the market infrastructure in trading and clearing of OTC derivatives, particularly CDSs.

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NYSE Euronext

NYSE Euronext announces new SmartPool partner

JP Morgan is to join the SmartPool venture set up by NYSE Euronext, BNP Paribas and HSBC. SmartPool is an FSA-authorized firm that operates an MTF providing a dark pool for executing large institutional order flow.

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INTERNATIONAL REGULATORY DEVELOPMENTS (November 2008)

By Emma Radmore (Senior Solicitor) and Kate Crowley (Paralegal)

EUROPEAN UNION

European Commission

Commission updates on State Aid

The Commission has published the latest figures on State Aid and commented particularly on how co-ordinated action has allowed Member States to get support schemes in place quickly to address the financial crisis. It also specifically approved:

- Danish proposals to give help in the liquidation of Roskilde Bank;
- a Spanish plan for providing liquidity to eligible banks;
- a scheme to give financial help to Hungary;
- a Dutch financial institution guarantee scheme;
- a French scheme for refinancing credit institutions;
- Dutch emergency recapitalisation of ING;
- a Finnish support scheme for financial institutions;
- an Italian scheme to refinance credit institutions; and
- a Greek scheme to support credit institutions.

The Commission has also agreed more State Aid plans for Latvia's JSC Parex Banka and support for Latvia generally. It has agreed measures with Belgium for helping Fortis Bank and joint aid from Belgium, France and Luxembourg for Dexia. Neelie Kroes also spoke on the State Aid Action Plan.

Jose Barroso, the Commission's President, also spoke on European answers to the financial crisis. He looked at the immediate help the Commission had to give and what now needs to be done. Priorities include tightening up the regulation of credit-rating agencies (CRAs) and dealing with executive pay. He also wants to look at hedge funds, derivatives and private equity. However, he stressed the biggest challenge is to rebuild the global financial system, which needs co-operation between not only the EU and US but other major market players as well, such as China and India.

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Commission adopts consolidated IFRS

The Commission has adopted a consolidated text of all International Financial Reporting Standards (IFRS) measures in force in the EU.

Commission and CESR welcome IASB fair value guidance

The Commission is pleased with International Accounting Standards Board's (IASB's) guidance on fair value measurement in inactive markets. Charlie McCreevy said it gave firms the clarity they need and is consistent with US guidance. Committee of European Securities Regulators (CESR) is also pleased with the guidance and is monitoring developments.

Commission holds derivatives meeting

Charlie McCreevy was pleased with the first meeting of a Commission working group he has set up to look at clearing of credit default swaps (CDSs).

Commission adopts CRA proposal

The Commission has adopted a proposal for a Regulation on CRAs. The proposals include rules to ensure CRAs:

- ensure conflicts of interest do not affect ratings;
- are vigilant on the quality of their methodology and ratings;
- act transparently and publish an annual transparency report;
- do not provide advisory services;
- cannot rate financial instruments if they do not have sufficient quality information to base their ratings on;
- must disclose the models, methodologies and key assumptions on which they base their ratings;
- create an internal function to review the quality of their ratings; and
- have at least three independent directors on their boards whose remuneration cannot depend on the business performance of the rating agency. At least one of them should be an expert in securitisation and structured finance.

In some areas, the proposals go further than the International Organisation of Securities Commission (IOSCO) standards.

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Commission holds financial supervision meeting

The Commission's high-level expert group on financial supervision met for the first time on 12 November. The group is to publish its initial recommendations for how to make supervision supranational in February 2009. Joaquin Almunia, Commissioner for Economic and Monetary Policy, spoke on the European response to the financial crisis. He looked at assistance the EU has given to individual countries, and implications for the EU economy.

Commission on the conference circuit

Charlie McCreevy has spoken on:

- **MiFID:** he spoke on how Markets in Financial Instruments Directive (MiFID) has promoted better investor protection and financial stability. He said it is too soon to gauge its impact in many countries but said early signs are positive;
- **SEPA:** he looked at the success of measures so far and how to deal with the challenges of the Payment Services Directive (PSD) and Single European Payments Area (SEPA) Direct Debit initiatives; and
- **prudential supervision in an integrated market:** he looked at how to strengthen collaboration among European supervisors. He referred specifically to Solvency II, Capital Requirements Directive (CRD) proposals and SEPA. He also spoke of his plans to strengthen the roles of the European Committees of Supervisors.

Commission pleased with third country GAAP approval

The European Securities Committee has approved Commission plans to grant equivalence to certain third country General Accepted Accounting Practices (GAAP) from next year. The countries in question are US, Canada, China, South Korea and India.

Commission and China agree on financial information services

The EU and China have reached agreement on how EU-based financial information providers like Reuters and Bloomberg can provide services in China.

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Committee of European Securities Regulators (CESR)

CESR advises Commission on UCITS management passport

CESR has published its advice to the Commission on the Undertakings for Collective Investments in Transferable Securities (UCITS) management company passport. The advice covers:

- domicile of the management company (which should follow the MiFID approach to domicile) and the UCITS (which should be the state in which it has received authorisation);
- applicable law and allocation of supervision: CESR recommends which "home state" laws of the relevant UCITS the manager should follow where it manages a UCITS cross-border. These include the rules on investment limits and valuation;
- how to authorise UCITS established in a different Member State to their manager: this builds in a mechanism for the regulator in the UCITS home state to check the manager is suitable for the specific fund despite the general right of any UCITS manager to manage a UCITS in any other Member State;
- continuing manager supervision: CESR's advice allows for each relevant supervisor to get the right information; and
- dealing with management breaches: CESR wants to allow the UCITS supervisor to take direct action to enforce some kind of management breach.

CESR sent the advice to the Commission with a covering letter that explains it could not run its usual full consultation exercise because the Commission needed urgent advice. Several CESR members, including Ireland and Luxembourg, are not happy with at least some of its recommendations.

CESR looks at MiFID impact

A year after MiFID implementation, CESR is assessing its impact and has published two calls for evidence:

- on MiFID's impact on secondary market functioning (responses by 9 January); and
- on the review of scope of the transaction reporting obligation (responses by 5 December).

It is also looking at transparency of non-equity markets and reassessing its methodology for MiFID market transparency calculations.

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CESR updates short-selling measures

CESR has again updated its list of short-selling measures its members have adopted.

CESR confirms MAD hearing

CESR has confirmed the hearing on Market Abuse Directive (MAD) Level 3 will take place in Paris in the afternoon of 26 November.

CESR supports Indian GAAP

CESR has recommended to the Commission that issuers should be able to use Indian GAAP until 2011, by which time it expects it to have converged with International Financial Reporting Standards (IFRS).

CESR feeds back on fair value measurement

CESR has published a feedback statement on fair value measurement and related disclosures of illiquid financial instruments. Respondents to its consultation mainly supported its views. They felt strongly that only one regulator should issue guidance so CESR should feed its views into the appropriate channels. However, they thought its statements were useful.

Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)

CEIOPS reports on pensions outsourcing

CEIOPS has published a report on outsourcing by institutions for occupational retirement provisions (IORPs). It has carried out a survey looking at:

- how Member States treat different functions of IORPs in terms of transfer of functions to third party providers;
- what requirements Member States apply to outsourcing under EU law and where they go beyond any Directive; and
- whether there are any problems with EU law as it applies to outsourcing by these bodies.

THE COMPLIANCE DIGEST

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CEIOPS looks at governance

CEIOPS has published an issues paper that looks at possible Level 2 measures on governance. It looks at:

- general governance requirements;
- fit and proper requirements;
- risk management system;
- internal control;
- internal audit;
- actuarial function; and
- outsourcing.

It invites comments by 12 January.

CEIOPS adopts mediation tool

CEIOPS has adopted a mediation tool to help regulators if members' discussions on supervisory issues in crisis situations need mediation.

CEIOPS feeds back on ORSA

CEIOPS has published a feedback paper on own risk and solvency assessment (ORSA). Respondents to its consultation highlighted several concerns CEIOPS will look at when developing Level 3 guidance. Concerns included:

- what supervisors will use ORSA for;
- the burden on small firms; and
- whether independent assessment of the ORSA process and outcome is really necessary.

CEIOPS reports on market developments

CEIOPS has published its 2008 report on market developments. The report looks at cross-border activity of institutions for occupational retirement provision. Almost all the activity comes from the UK and Ireland.

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CEIOPS updates insurance groups data

CESR has updated its database showing how members have implemented various options in the Insurance Groups Directive. It has also published an analysis of how close Swiss law is to the EU provisions.

CEIOPS announces QIS4

CEIOPS has released its report on Qualified Investor Scheme 4 (QIS4). The exercise was a success and CEIOPS now has more useful data for its Solvency II work.

CEIOPS publishes results of conference

CEIOPS has held its annual conference. Much of the conference concentrated on Solvency II, the EU political process and CEIOPS' work so far. There was also discussion on financial conglomerates and consumer topics.

ECB not to allow English syndicated loans as collateral

ECB has decided it will no longer accept syndicated loans governed by English and Welsh law as eligible collateral after 30 November. Any loans already being used as collateral will be acceptable until they mature.

ECB pleased with SEPA but notes concerns

ECB is pleased at the significant progress of SEPA but also sets 10 milestones which it says the market must follow up. These include:

- better communication and consistent customer experiences;
- a more ambitious approach to SEPA for cards; and
- even more efforts focused on security in SEPA payments.

Committee of European Banking Supervisors (CEBS)

CEBS speaks at BBA

Arnoud Vossen of CEBS spoke at British Banker's Association's (BBA's) conference on the home versus host debate and making supervisory structures work.

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CEBS members update on crisis measures

CEBS' website contains details of recent measures by Danish and Slovakian regulators. CEBS has published updates on crisis measures taken in respect of particular institutions in Latvia and Sweden and also include details from Iceland on the progress it has made on deposit guarantees.

CEBS updates from supervisors

CEBS has published updates from Iceland on Kaupthing and Glitnir. The court has granted moratorium orders in respect of the banks. The orders do not affect "new" Kaupthing and "new" Glitnir.

CEBS announces conglomerates conference

CEBS has announced an industry hearing on 16 December to discuss the results of the Interim Working Committee on Financial Conglomerates (IWCFC) research on national implementation of the Financial Conglomerates Directive.

CEBS speaks on supervisor role

Kerstin af Jochnick, chair of CEBS, spoke on CEBS' role in strengthening supervisory co-operation in respect of cross-border banking groups and current plans for supervisory colleges.

European Central Bank (ECB)

ECB holds CDS CCP meeting

ECB has hosted a meeting on establishing central counterparties (CCP) for credit default swaps (CDP).

ECB agrees and updates more collateral specifications

ECB has published some additions to its specifications for temporary expansion of the list of assets eligible as collateral in Eurosystem credit operations. From 14 November, and subject to various conditions, marketable debt instruments denominated in US dollars, pounds sterling or Japanese yen are eligible collateral for Eurosystem credit operations. The instruments must be issued and held/settled in the euro area, and the issuer must be established in the EEA. Also ECB has published more technical specifications on the temporary expansion of the collateral framework.

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The specifications look at:

- governing laws of syndicated loans;
- activities of non-financial corporations;
- rating of facility agents;
- denomination of loans;
- mobilisation of loans and notifications;
- other legal requirements including on transferability and set-off of loans; and
- legal opinions confirming compliance.

OTHER AUTHORITIES/ REGULATORS/ TRADE ASSOCIATIONS

Bank For International Settlements (BIS)/Basel Committee

BIS publishes OTC figures

BIS has published the statistics for Over the Counter (OTC) derivatives trading for the first half of 2008.

BIS publishes working papers

BIS has published working papers on:

- price discovery from cross-currency and FX swaps; and
- external support and bank behaviour in the international syndicated loan market.

Nout Wellink, Chairman of the Basel Committee, has also spoken on the importance of banking supervision to financial stability.

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Basel announces strategy for banking crisis issues

The Basel Committee has outlined a plan to address the weaknesses the financial crisis has shown up. The plans include:

- strengthening the risk capture of the Basel II framework;
- enhancing the quality of Tier 1 capital;
- enabling supervisors better to assess funding liquidity at cross-border banks; and
- strengthening counterparty risk capital, risk management and disclosure as well as governance practices.

There will be various consultations in early 2009.

Financial Action Task Force (FATF)

FATF publishes reports

FATF has published two reports:

- Ratings Based Approach (RBA) Guidance for Legal Professionals and Casinos: these look at Anti-Money Laundering (AML)/ Combating the Financing of Terrorism (CFT) issues specific to these sectors, following guidance FATF adopted last year; and
- A Mutual Evaluation of Japan. This assesses Japan's compliance with FATF's recommendations.

FATF approves Japanese AML measures

FATF has published its assessment of Japanese AML/CFT laws against its standards. It found them generally good, although it made some recommendations for improvement.

FATF publishes UAE report

FATF has published its mutual evaluation report on the United Arab Emirates (UAE). It found a basic AML/CFT structure exists, but identified many areas that need strengthening.

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International Organisation Of Securities Commissions (IOSCO)

IOSCO writes to G-20

IOSCO has written to the G-20 summit stressing the need for global political and regulatory co-operation in the financial crisis. It says one way to plug regulatory gaps is for all countries to comply with the IOSCO core principles. It also notes its initiatives to work on some gaps that have emerged.

IOSCO task forces support G-20

IOSCO has launched a detailed work programme to work on market turmoil. It has set up Technical Committee Task Forces to look at short selling, unregulated financial products and markets and unregulated financial entities (including hedge funds).

MARKETS AND CLEARING HOUSES

Eurex

Eurex and Clearstream launch CCP

Eurex Clearing and Clearstream plan to launch a CCP service for securities lending in 2009.

NYSE Euronext

LCH.Clearnet to clear for LIFFE

NYSE Euronext has announced that LIFFE Administration and Management is to take full responsibility for clearing London market activities by becoming a self-clearing Recognised Investment Exchange (RIE). It will outsource some clearing functions to LCH.Clearnet, under new arrangements known as "LiffeClear". It plans to do this in early 2009.

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THE COMPLIANCE REGISTER

THE 2008 OStCaR AWARDS CHRISTMAS PARTY

The 5th Annual OStCaR Awards will be held on 8 December at the 5-Star Landmark Hotel in London and will be the ideal event for your firm or departmental Christmas party. The brochure can be downloaded from our website.

THE 2008 TECHNICAL CONFERENCES

A series of technical conferences are being planned for the Autumn – these will be limited to 30 delegates per conference to enable proper coverage of chosen topics. Please see our website for details.

THE 2009 MLROs.COM ANNUAL CONFERENCE

The Compliance Register is pleased to be organising the above conference on behalf of MLROs.com – the conference will be on 24 March in London. Please see our website for details.

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GUIDE TO ABBREVIATIONS

ABI – Association of British Insurers

AIFA – Association of Independent Financial Advisers

FOS – Financial Ombudsman Scheme

FSA – Financial Services Authority

FSMA – The Financial Services & Markets Act 2000

FSMT – Financial Services & Markets Tribunal which is independent of the FSA and run by the Department of Constitutional Affairs

GI – General Insurance

MAD – Market Abuse Directive

MiFID – Market in Financial Instruments Directive or alternatively dubbed as Trade in Financial Instruments Directive (TriFID) by Ben Goh

MPBR – More Principle Based Regulation

NYSE – Market Abuse Directive

OStCaR – Outstanding Service to Compliance and Regulation – refers to the compliance awards pioneered by The Compliance Register since 2004

SCAR Products – Structured Capital At Risk Products

SEC – Securities and Exchange Commission, the main US regulator

SIPPs – Self Invested Personal Pensions

TCF – Treating Customers Fairly – one of the first initiatives by the FSA as part of the move to Principle-Based Regulation.

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International Regulatory Developments is written by Denton Wilde Sapte and designed to cover main non-UK regulatory developments.

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