Morrison & Foerster News Bulletin Volume 1, Issue 11 August 13, 2010

Structured Thoughts

News for the financial services community.

IN THIS ISSUE:

What's Complex? CESR Provides Technical Advice

In our 29 March 2010 issue of *Structured Thoughts*[1] we discussed issues relating to complex and non-complex financial instruments in the context of the public consultation relating to the application of the appropriateness test under the Markets in Financial Instruments Directive ("*MiFID*").[2] In its recent technical advice paper to the EU Commission in relation to investor protection and intermediaries,[3] the Committee of European Securities Regulators ("*CESR*") proposed various changes to Article 19(6) of the MiFID Directive as discussed below.

Background

For investment products or services other than the provision of investment advice or discretionary portfolio management, a firm is required to undertake an appropriateness test to determine whether its client has the necessary knowledge and experience to understand the risks involved.[4] However, under Article 36 of the implementing Directive relating to MiFID[5] (the "*Implementing Directive*"), firms may assume that a professional client

[1] Structured Thoughts: CESR public consultation relating to application of MiFID appropriateness test to certain structured products (29 March 2010), http://www.mofo.com/files/Uploads/Images/100329StructuredThoughts.pdf.
[2] Directive 2004/39/EC of 21 April 2004 on markets in financial instruments, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:145:0001:0044:EN:PDF.
[3] CESR Technical Advice: Investor Protection and Intermediaries in the context of the European Commission's review of MiFID (29 July 2010), http://www.cesr.eu/popup2.php?id=7007.
[4] Article 19(5) of MiFID.
[5] Directive 2006/73EC of 10 August 2006 implementing Directive 2004/39/EC as regards organizational requirements and operating conditions for investment firms and defined terms for the purpose of that Directive, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:241:0026:0026:EN:PDF.

has the necessary knowledge and experience in relation to the products and services for which they are registered as professionals. In addition, certain transactions in "non-complex" financial instruments which are initiated by the investor are exempted (the "*execution only exemption*").

The key provisions in relation to the execution only exemption are Article 19(6) of MiFID and Article 38 of the Implementing Directive. We refer to these provisions as "*Article 19(6)*" and "*Article 38*" for the remainder of this note. Article 19(6) currently provides that the execution only exemption applies in relation to execution and/or the reception or transmission of orders where:

- the services relate to shares admitted to trading on a regulated market (or an equivalent third-country market), money market instruments, bonds or other forms of securitized debt (excluding bonds or securitized debt that embed a derivative), UCITS and other non-complex financial instruments;
- the service is provided at the initiative of the client or potential client;
- the client or potential client has been clearly informed that the investment firm is not required to assess the suitability of the instrument or service; and
- the firm complies with its obligations under MiFID relating to conflicts of interest.

Instruments other than those specifically mentioned in Article 19(6) as falling within the execution only exemption may still fall within the category of "other non-complex financial instruments." Article 38 sets out the relevant criteria, which include:

- the product or instrument must not fall within specified investments including practically all forms of options, futures, swaps and other derivatives relating to securities, currencies, interest rates, financial indices, commodities or credit derivatives;
- there must be frequent opportunities to sell or redeem the instrument at publicly quoted prices;
- the instrument must not involve any actual or potential liability exceeding its acquisition cost; and
- comprehensive information on the characteristics of the instrument is publicly available and is likely to be readily understood to enable an average retail client to make an informed investment decision.

Previous CESR Consultation

In May 2009, CESR launched a public consultation relating to how the appropriateness requirements apply to complex and non-complex financial instruments under MiFID. In its consultation paper,[6] CESR outlined its views on the interpretation and application of Article 19(6) and Article 38 and invited comments from market participants. On 3 November 2009, CESR published a feedback statement[7] together with a Q&A paper,[8] which dealt with certain issues arising out of the consultation and considered the treatment in relation to specific instruments highlighted by respondents whilst highlighting specific issues for consideration by the EU Commission.

[6] CESR Consultation Paper: MiFID complex and non-complex financial instruments for the purpose of the Directive's appropriateness requirements (14 May 2009), http://www.cesr.eu/popup2.php?id=5721 (comments deadline: 17 July 2009).
[7] CESR Feedback Statement: MiFID complex and non-complex financial instruments for the purposes of the Directive's appropriateness requirements (3 November 2009), http://www.cesr-eu.org/data/document/09_558.pdf.
[8] CESR Q&A: MiFID complex and non-complex financial instruments for the purposes of the Directive's appropriateness requirements (3 November 2009), http://www.cesr.eu/popup2.php?id=6158.

Technical Advice Paper of 29 July 2010

In the recent technical advice paper referred to above, CESR restated its view that MiFID does not currently deal adequately with certain categories of financial instruments for the purpose of the appropriateness requirements, and sets out proposed changes to Article 19(6). It notes, however, that its proposals do not take into account any changes that may be necessary in the future as a result of the outcome of discussions on the regime for packaged retail investment products.[9]

Proposed New Article 19(6)

CESR's proposed text for a revised Article 19(6) is as follows, with the proposed new wording underlined:

"Member States shall allow investment firms when providing investment services that only consist of execution and/or the reception and transmission of client orders with or without ancillary services to provide those investment services to their clients without the need to [undertake a determination as to appropriateness] provided for in paragraph 5 where all the following conditions are met:

<u>(a)</u> <u>the above services relate to any of the following financial instruments:</u>

> <u>(i)</u> shares admitted to trading on a regulated market or <u>on</u> an equivalent third country market, <u>where these are shares in companies, and excluding shares in non-UCITS collective investment undertakings and shares that embed a derivative</u>;
>
> <u>(ii)</u> bonds or other forms of securitized debt, <u>admitted to trading on a regulated market or on an equivalent third country market, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved</u>;
>
> <u>(iii)</u> money market instruments, excluding those that embed a derivative <u>or incorporate a structure which makes it difficult for the client to understand the risk involved</u>;
>
> <u>(iv)</u> UCITS; or
>
> <u>(v)</u> other non-complex financial instruments.
>
> A third country market shall be considered as equivalent to a regulated market if it complies with equivalent requirements as to those established under Title III. The Commission shall publish a list of those markets that are to be considered as equivalent. This list shall be updated periodically:

<u>(b)</u> the service is provided at the initiative of the client or potential client;

<u>(c)</u> <u>the service is not provided in conjunction with ancillary service (2) as specified in Section B of Annex 1</u> [granting credit or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction];

<u>(d)</u> the client or potential client has been clearly informed that in the provision of this service, the investment firm is not required to assess the suitability <u>or appropriateness</u> of the instrument or service provided or offered and that therefore he does not benefit from the corresponding protection of the relevant conduct of business rules; this warning may be provided in a standardized format;

<u>(e)</u> the investment firm complies with its obligations under Article 18 [conflicts of interest]."

---

[9] Structured Thoughts: An update on the EU actions on PRIPs (10 February 2010), http://www.mofo.com/files/Publication/f17b0cf1-4d0f-469a-955d-e48fe44565bd/Presentation/PublicationAttachment/a7aa0212-967d-4490-940d-ff237efc43b8/100210Structured_thoughts_issue_3.pdf.

Shares (Proposed New Article 19(6)(a)(i))

CESR repeats its view that the reference to shares should capture shares admitted to trading on an EEA-regulated market or equivalent third-country markets but should exclude other securities equivalent to shares in companies or other entities and depositary receipts in respect of shares. Any such securities should be assessed against the criteria for other non-complex instruments set out in Article 38 (the "*Article 38 criteria*"). It also repeats its view that, by reference to the Article 38 criteria, any type of share that embeds a derivative including convertible and callable shares should be treated as complex. It states that shares in a non-UCITS fund should be assessed under the Article 38 criteria.

In relation to subscription rights and nil paid rights in shares, it believes the exercise of such rights should follow the treatment applied to the relevant underlying instrument.

Money Market Instruments, Bonds and Other Forms of Securitized Debt (Proposed New Article 19(6)(a)(ii) and (iii))

CESR's proposed amendments are aimed at clarifying that the qualification in existing Article 19(6) relating to instruments not embedding a derivative applies to all money market instruments, bonds and other securitized debt.

CESR also proposes to tackle its previously stated concern that the increase in volume and complexity of fixed income products in the last decade has meant the current wording in Article 19(6) is inadequate for appropriate investor protection. CESR therefore proposes that all money market instruments, bonds and other securitized debt can only be regarded as non-complex if, in addition to not embedding a derivative, they also do not incorporate a structure which makes it difficult for the client to understand the risk involved (structured covered bonds are given as an example of such an instrument).

In relation to bonds, CESR believes the amendments should go further than it previously suggested and that the evolution in the bonds markets and the experience of the financial crisis justify an approach to bonds analogous to that of shares. It therefore proposes that only bonds admitted to trading on an EEA-regulated market or equivalent third-country market should be automatically non-complex under Article 19(6).

UCITS and Other Collective Investment Undertakings (Proposed New Article 19(6)(a)(iv))

CESR repeats its previous observation that Article 19(6) treats all UCITS as automatically non-complex, irrespective of the underlying investment and acknowledges that this is a controversial area. It states that any change at present is difficult and raises wider issues about the UCITS regime. It therefore currently proposes no change to the treatment of UCITS in relation to Article 19(6), although it has invited the EU Commission to consider whether there is additional work it requires CESR to undertake in considering this question.

Other Non-Complex Financial Instruments (Proposed New Article 19(6)(a)(v))

CESR repeats its view that it is not practicable for Article 19(6) to determine the treatment in respect of all types of financial instruments and that the aim of Article 38 is to confine the scope of other non-complex instruments falling within the execution only exemption to instruments that are transparent, liquid and easily understood. It proposes no further clarification to what constitutes "other non-complex financial instruments."

Additional Proposals

CESR proposes that Article 19(6) should expressly provide that if a firm is offering the ancillary service of granting credit or loans with the execution and/or reception or transmission of client orders, it should be required to carry out an appropriateness test. CESR also notes that the current requirement to inform the client or potential client that an assessment has not been undertaken only refers to suitability and it should also be made clear that an appropriateness assessment has not been carried out.

Effect of Proposed Changes

By its own admission, the changes proposed to Article 19(6) by CESR are largely by way of clarification. The most material change proposed is narrowing the scope of the execution only exemption in relation to bonds or other securitized debt to those traded on a regulated market. As significant as what the paper covers is what it does not cover. Although some respondents called for greater clarity as to what comprises "other non-complex instruments" for the purpose of Article 19(6) and Article 38, CESR has declined to do so. It states that it cannot be expected that MiFID will explicitly cater for every combination or permutation of financial product that exists in the market, having regard to the fact they are constantly evolving and changing.

Although during the consultation process a number of commentators questioned the rationale of automatically excluding instruments embedding a derivative from the execution only exemption on the grounds that some products with derivatives are relatively easy to understand and that there is not necessarily a correlation between complexity and risk (and the inclusion of a derivative within a product can limit some of the risk the investor would otherwise assume), CESR is not proposing any change to this principle and it therefore seems unlikely the EU Commission will make any change in this regard.

CESR states that it believes that all instruments excluded from Article 19(6) should be automatically complex and not be brought back in as non-complex through Article 38, and that the Article 38 criteria should only apply to instruments whose classification is not addressed by Article 19(6). More clarification may be needed here as this treatment does not seem clear on the face of the proposed new Article 19(6), and CESR also states in its advice that certain types of instrument, such as bonds not listed on a regulated market and non-UCITS fund shares (which are excluded from its proposed Article 19(6)), should be assessed against the Article 38 criteria.

CESR Technical Advice on Non-equity Market Transparency

On 29 July 2010 CESR published Technical Advice 10 (the "2010 Advice") to the EU Commission on non-equity market transparency in the context of the review of the Markets in Financial Instruments Directive 11 ("MiFID").

Background

The MiFID Directive currently contains detailed requirements for pre- and post-trade transparency in relation to shares admitted to trading on a regulated exchange or multilateral trading facility ("*MTF*") but does not, at present, contain similar provisions in relation to debt securities.

CESR previously considered in 2007[12] and in a report in July 2009[13] (the "*July 2009 Report*") whether to extend the MiFID transparency requirements to non-equity financial instruments. In the 2007 report, it considered that at such time there was no evident market failure in respect of market transparency on corporate bond markets and there was no need for a mandatory pre- or post-transparency regime in respect of such instruments. In its July 2009 Report, which focused solely on post-trade transparency, CESR concluded that additional post-trade transparency in respect of the instruments considered would be beneficial to the market. In relation to corporate bonds, it

[10] CESR Technical Advice to the European Commission in the Context of the MiFID Review: Non-equity Markets Transparency (29 July 2009), CESR/10-799, http://www.cesr.eu/popup2.php?id=7005.
[11] Directive 2004/39/EC of 21 April 2004 on markets in financial instruments, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:145:0001:0044:EN:PDF.
[12] CESR's response to EU Commission on non-equities transparency (June 2007), CESR07-284b, http://ec.europa.eu/internal_market/securities/docs/isd/07-284b_en.pdf.
[13] CESR's report on transparency of corporate bonds, structured finance products and credit derivatives market (10 July 2009), CESR/09-348, http://www.cesr.eu/popup2.php?id=5798.

recommended that the post-trade transparency regime should cover all corporate bonds for which a prospectus had been published (and were therefore admitted to trading on a regulated market in the EEA) or which were admitted to trading on a MTF.

In relation to asset-backed securities ("*ABS*") and collateralized debt obligations ("*CDOs*"), CESR proposed in its July 2009 Report that a phased approach should be introduced to gradually apply the regime to all standardized products. In relation to credit default swaps ("*CDS*"), CESR stated that the post-trade transparency regime should cover all CDS contracts eligible for clearing by a central counterparty due to their level of standardization.

Following a recent consultation on non-equity market transparency[14] (the "*2010 Consultation*"), CESR has modified and refined its advice. Its conclusions are similar to those set out in the July 2009 Report but it has made some changes to the proposed scope of its proposals, the thresholds for relevant disclosures and the timing of such disclosures. CESR's conclusions as set out in its 2010 Advice are summarized below.

Pre-trade transparency for bonds, structured finance products, CDS and derivatives

CESR notes that MiFID does not mandate pre-trade transparency for instruments other than shares admitted to trading on an EEA-regulated market. Operators of regulated markets and MTFs must, however, ensure that there is fair and orderly trading on their platforms which means that they must publish information about buying and selling relevant instruments on their platform. In addition, Recital 46 of MiFID provides that Member States may decide to apply pre- and post-trade transparency to financial instruments other than shares. CESR notes that a number of Member States have availed themselves of this option.

As part of the 2010 Consultation, CESR sought the view of market participants as to whether there is an absence of pre-trade transparency for corporate bonds, structured finance products, CDS and various types of derivative transactions. The majority of the feedback received from market participants indicated that they thought there was no lack of relevant pre-trade information and, particularly in the OTC markets, it would be very difficult to implement a viable regime. CESR believes, however, that for smaller participants, including retail investors, pre-trade information is difficult to obtain and they could benefit from a pre-trade transparency regime.

In its 2010 Advice, CESR states it gives great importance to pre-trade transparency and the need for investors to compare prices and other relevant information to meet best execution obligations under MiFID. It is concerned that there is currently an uneven playing field in the EEA in relation to pre-trade transparency other than shares. Accordingly, it recommends that the current voluntary arrangements put in place by most regulated markets and MTFs in relation to non-equity instruments traded on their platforms are put on a formal footing and that a compulsory harmonized pre-trade transparency regime be introduced in respect of EEA regulated markets and MTFs. In view of the difficulties it highlights in introducing such a regime to the OTC markets, CESR does not currently propose to introduce mandatory pre-trade transparency to such markets but suggests that individual member states be given the ability to impose local requirements to such effect if deemed necessary.

Post-trade transparency for corporate bonds and public bonds

CESR recommends that a post-trade transparency regime be introduced for transferable securities with a maturity of at least 12 months issued by both privately and publicly owned companies for which a prospectus has been published, and/or are admitted to trading on a regulated market or MTF within the EEA. In relation to covered bonds, CESR believes that these will generally fall within the regime for corporate bonds (rather than the structured finance regime set out below). CESR also believes that convertible and exchangeable bonds should fall under the corporate bond regime and not the regime for equity instruments. Although not included in its July 2009 Report, CESR also proposes a regime for "public bonds" to cover transferable debt securities and treasury bills issued by sovereigns and sovereign entities (bonds issued by private companies guaranteed by sovereigns will fall within the

[14] CESR Technical Advice to the European Commission in the Context of the MiFID Review: Non-equity markets transparency (7 May 2010), CESR/10-510, http://www.cesr.eu/data/document/10_510.pdf.

corporate bond regime) for which a prospectus has been published and/or are admitted to trading on a regulated market or MTF in the EEA.

In relation to corporate bonds, CESR recommends that the post-trade transparency regime should be based on transaction size. Its current recommendations are as follows:

Transaction size (net value)	**Information to be published**	**Timing of publication**
Up to [between EUR500,000 to EUR1 million][15]	Price and volume of transaction	As close to real time as possible and no later than 15 minutes
Between the [EUR500,000/ 1 million] threshold above and EUR5 million	Price and volume of transaction	End of trading day
Above EUR5 million	Price of transaction but not volume (but an indication the EUR5 million threshold has been exceeded)	End of trading day

CESR believes this information should include, as a minimum, a description of the bond, the price/yield at the time of the transaction, the volume of the executed trade and the date and time of the transaction (as indicated in its July 2009 Paper) and also information as to the notional value of the bond. It also agrees in principle that the thresholds and timings should ideally be calibrated against the liquidity of the relevant instrument. However, at present it does not have sufficient data to craft the arrangements in this way. CESR states, however, that it will undertake further analysis to determine whether the specified thresholds and timings are appropriate. In this regard it recommends that a joint assessment between the European Securities and Markets Authority ("*ESMA*") (to be the successor body to CESR under the new EU regulatory regime) and the EU Commission be conducted during the period commencing at the end of nine months from the introduction of the new regime, and ending on the first anniversary thereof, focusing on the thresholds and timings for reporting and whether this should reflect the liquidity of particular instruments.

CESR also recommends that the EU Commission follow the same approach for equity markets as non-equity markets.

In relation to public bonds, CESR recommends almost the same calibrations as for corporate bonds, although it believes the lower threshold for transaction size should be EUR1 million, and that although in relation to transactions up to this size, the timing of publication should be as close to real time as possible, the 15 minute express requirement should not apply. CESR intends the regime for public bonds to be included with the ESMA/EU Commission post-transaction implementation review mentioned above.

Post-trade transparency for structured products

CESR notes that in the July 2009 Report it set out its view that there should be a post-trade transparency regime for structured products but that in view of the uncertainties surrounding the market, the regime should be aimed at ensuring that market liquidity is not adversely affected as a result of such regime and should be introduced in a cost

[15] Amount to be confirmed following further consultation.

effective way. It had therefore recommended a phased approach for implementing a post-trade transparency regime for structured finance products.

In its 2010 Advice, CESR recommends that the transparency regime for structured products should cover all ABS and CDO transactions for which a prospectus has been published, therefore including all ABS and CDOs admitted to trading on an EEA-regulated market, or admitted to trading on an MTF. In setting out a phased approach, CESR believes that the most practicable criteria is the rating of the relevant instrument at the time the regime is established (in respect of instruments existing at such time) or at the time of issuance of the instrument (in respect of instruments issued after the implementation date).

During the first phase of implementation, CESR believes this should encompass all instruments rated AAA, AA or A (or equivalent). As with the proposed regime for corporate bonds, CESR recommends that the type and timing of disclosure be based initially on transaction size, although due to the specific nature and level of liquidity of structured finance products, it does not propose a real-time reporting requirement. In relation to transactions up to EUR5 million, it proposes publication of prices and volumes at the end of the trading day. In relation to transactions above that threshold, it proposes that there is publication of price but not volume at the end of the trading day with an indication that the EUR5 million threshold has been exceeded. Information to be made public should include: (i) standard format of identification, (ii) the issuer name, (iii) the price at which the transaction was concluded, (iv) volume of the executed trade, (v) date and time of the trade, (vi) currency, (vii) maturity and (viii) the rating, if any.

CESR believes that the ESMA/EU Commission review referred to above should assess the appropriateness of the thresholds and timings for disclosure and consider whether these should be adjusted and whether further factors such as liquidity should also be taken into account. CESR does not, however, believe the scope of the regime should be changed. In addition, after the end of the initial one-year transitional period and following any recalibration of the requirements, CESR believes that the second phase of implementation should commence and cover all structured finance products for which a prospectus has been published (and will therefore include all such products admitted to trading on an EEA regulated market) or that are admitted to trading on an MTF.

Post-trade transparency for CDS

In its July 2009 Report, CESR concluded that a post-trade transparency regime should apply to all CDS contracts eligible for clearing by a central counterparty ("*CCP*") due to their level of standardization. It noted at the time that the universe of CDS eligible for clearing includes index and some single-name CDS but that in due course it is likely to expand to include a broader range of single-name CDS and some sovereign CDS.

Following the consultation, CESR remains of the view that its proposed framework for post-trade transparency of CDS is appropriate. However, having done further analysis, it believes that its previously proposed threshold of EUR1 million is insufficient and would not capture a significant amount of trading. It now proposes the following for post-trade transparency of single-name CDS eligible for CCP clearing:

- For trades up to EUR5 million, the price and volume of the transaction should be published in real time.
- For all trades from EUR5 million to EUR10 million, the price and volume should be published at the end of the trading day.
- For all trades above EUR10 million, the price should be published at the end of the trading with an indication that the transaction has exceeded the EUR10 million threshold.

In relation to index CDS transactions, CESR notes that the results of its consultation process indicates that it would not be appropriate to apply the same thresholds for these transactions as single-name CDS having regard to the higher average trading size for these instruments. It therefore recommends the same approach as set out above for single-name CDS also apply to CDS transactions but by increasing the lower threshold from EUR5 million to EUR10 million and by increasing the higher threshold from EUR10 million to EUR 25 million. This will not however apply to CDS in relation to "off the run" indices (more liquid types of index) which will have the same thresholds as for single name CDS transactions.

In addition, to reflect the anticipated move of sovereign CDS to CCPs, CESR proposes that such transactions be subject to the same regime as for CDS of single names.

In relation to the information to be made public, CESR largely retains the proposals set out in its July 2009 Report although it has withdrawn the proposal that the issuer name and the rating be disclosed. It now proposes that the post-trade transparency regime for any type of CDS should include (i) a standardized form of identification, (ii) the price at which the transaction was entered into, (iii) the volume of the executed trade, (iv) the date and time that transaction was concluded, (iv) its currency, (v) the maturity date and (vi) the reference entity.

CESR also believes that the thresholds and timings relating to the CDS post-trade transparency be considered by the joint ESMA/EU Commission review that it proposes. This review should also consider if certain transactions need to be recalibrated having regard to their particular liquidity.

Post-trade transparency for other derivatives

CESR notes that other derivatives (including interest rate, equity, commodity and FX derivative transactions) can either be traded on a derivatives exchange or be entered into OTC. It notes that derivatives traded on regulated markets in the EEA or MTFs are subject to transparency requirements as set out by national legislation and the relevant exchange rules. There are, however, no harmonized rules as to such requirements in the EU at present.

CESR states that many of the respondents it had received comments from seem satisfied with the current level of post-trade transparency for such products. CESR believes this is partly due to the often bespoke nature of OTC derivatives and limited secondary market trading for many instruments. It states, however, that other respondents perceive there is currently a lack of data in the OTC derivatives market and that post-trade transparency may help address this issue.

Although CESR admits that its analysis in relation to the OTC market is at an early stage, it believes that enhancing post-trade transparency for these assets will assist market participants in making investment decisions and in supporting more resilient and transparent markets. It therefore proposes that a harmonized post-trade transparency regime for such derivatives should be further developed, although it gives no further details of how it believes such regime should be calibrated.

Conclusion

Assuming that CESR's advice is adopted, it will go a long way towards harmonizing the approach for pre- and post-trade transparency for corporate and sovereign bonds, ABS, CDOs and certain CDS transactions. It is also clear that CESR ultimately intends to develop a harmonized post-trade transparency regime for other derivatives with a view to greatly increasing the transparency of information relating to financial transactions with the aim of strengthening the transparency and efficiency of such markets.

Contacts

Peter Green
+44 20 7920 4013
pgreen@mofo.com

Helen Kim
+44 20 7920 4147
hkim@mofo.com

About Morrison & Foerster

We are Morrison & Foerster—a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We've been included on *The American Lawyer*'s A-List for seven straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofo.com.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.