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Financial Services – Update on UK and European Regulatory Developments

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Part A – Regulation of Financial Markets

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Mandatory central counterparty clearing of OTC derivatives	EU	The European Market Infrastructure Regulations (EMIR) came into force on 16 August 2012. *(continued on next page)*	The Regulations introduce mandatory clearing of OTC derivatives via one or more central counterparties (clearing houses) which will be authorised by an EU regulator, and mandatory reporting of specified classes of derivatives trades to a trade repository. *Recent developments*: ESMA updated its Q&A on 2 June 2013, clarifying, amongst other things, the application of the risk mitigation rules to third country entities. ISDA and the FOA published a standard form client cleared OTC derivatives addendum on 11 June 2013. *(continued on next page)*	Click here for the Commission's derivatives page, including link to EMIR. Click here for ESMA's technical standards. Click here for the FCA's EMIR website. Click here for the Commission's EMIR Q&As. Click here for ESMA's Q&As. *(continued on next page)*

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Mandatory central counterparty clearing of OTC derivatives	EU	*(continued from previous page)* For the clearing obligation to apply, clearing houses must be authorised for clearing and classes of derivatives must be designated by ESMA as subject to the clearing obligation. Products which are currently cleared by clearing houses will be the first to be designated. ESMA stated in its discussion paper on technical standards relating to the classes of derivatives which are subject to the clearing obligation that the the first clearing obligation will not apply before June 2014, and could be as late as July 2015. ESMA's latest estimate for the date the first reporting requirement for interest rate and credit derivatives will apply is 1 January 2014, in alignment with the intended start date for reporting the other classes of derivatives. The European Commission's (the Commission) rules on portfolio reconciliation and compression between counterparties and to have dispute resolution procedures in place will come into force on 15 September 2013.	*(continued from previous page)* ISDA has published an EMIR NFC Representation Protocol. ISDA will also publish the EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol. This will provide a framework for parties to meet the portfolio reconciliation and dispute resolution requirements. *Recommended actions*: Confirm that existing procedures meet the EMIR risk mitigation requirements. Check the status of funds and other clients under EMIR and plan accordingly.	*(continued from previous page)* Click here for ESMA's discussion paper on technical standards relating to classes of derivatives which are subject to the clearing obligation.

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Short selling disclosures and restrictions	EU	The Regulations on short selling of shares and sovereign debt and various sets of related technical standards came into force on 1 November 2012 and have direct effect throughout the EU.	The Regulations introduced: (i) mandatory disclosure of net short positions to the regulator; (ii) restrictions on naked short selling; (iii) a prohibition on uncovered positions on sovereign credit default swaps and (iv) regulator powers to impose temporary restrictions during stressed markets. *Recent developments*: The FCA introduced changes to its reporting forms as from 10 June 2013, introducing a single form to make all share notifications. As at present, the forms must be downloaded, completed and returned by email to the FCA. Short sales of shares listed elsewhere in the EU should be reported to the relevant EU regulator. *Recommended actions*: Firms should monitor all short sales and ensure that disclosure is made in compliance with the Regulations.	Click here for ESMA's short selling Regulations website (including text of the Regulations). Click here for the FCA's short selling regulations website.
Review of the Market Abuse Directive	EU	The Commission published a proposal to revise the Market Abuse Directive (MAD II) on 20 October 2011. It consists of the Market Abuse Regulation (MAR) and a supplementing EU Directive on criminal sanctions for insider dealing and market manipulation (CSMAD). The UK government has for present exercised its discretion not to opt in to CSMAD. The Council of the EU reached political agreement with the European Parliament on MAR on 5 July 2013. MAR will apply 24 months after its entry into force, which indicates an implementation date of mid-2015.	The Commission intends that the scope of the existing market abuse regime will be extended to multilateral trading facilities (MTFs) and organised trading facility (OTFs), as well as regulated markets. Also in scope are related financial instruments traded on an OTC basis which can have an effect on instruments traded on a trading venue. Under the existing regime, the market integrity and transparency rules apply to commodity derivatives markets, but not to the underlying markets. The Commission intends that MAR will govern transactions or behaviour in the underlying spot markets which are related to, and have an effect on, the financial and derivative markets which are within the scope of MAR. The trading of emission allowances will also fall within the scope of MAR. *Recommended actions*: Prior to adoption, firms will need to identify relevant instruments in scope and undertake a full compliance review of market abuse procedures, including reporting procedures.	Click here for the Commission's proposal. Click here for the current draft of CSMAD. Click here for the current draft of MAR.

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Financial Transactions Tax	EU	The Commission adopted its proposal for a Directive on a financial transaction tax 14 February 2013.	The financial transaction tax (FTT) will apply to transactions in financial instruments, (such as bonds, shares, derivatives and fund units) OTC or on a market to which a financial institution established in an EU Member State is a party, and where at least one party to the transaction is established in an EU Member State. Financial institutions include UCITS and AIFs. Member States will apply the rates of FTT, which must be at least 0.1% of the consideration (for shares and bonds) and 0.01% of the notional amount (for derivatives). Securities issues are exempt. As drafted, the Directive has very wide extra-territorial effect, applying to transactions over instruments issued in participating EU Member States – so would cover a transaction with a UK bank over a French issued bond. The UK is not participating in the Directive. The UK government has mounted a legal challenge to the Directive at the European Court of Justice on the basis of the Directive's extra-territorial effect. Due to the lack of EU consensus, 11 EU countries have been authorised by the "enhanced co-operation" procedure to establish their own FTT. If implemented, the legislation will apply from 31 December 2014. However, much uncertainty remains as to if or when the FTT will be implemented in Europe.	Click here for the Commission's proposal and click here for the Parliament's recent legislative resolution with amendments to the proposal.

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Part B – Regulation of Investment Management

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Alternative Investment Fund Managers Directive	EU	The Directive came into force on 21 July 2011. Implementation by Member States is required by 22 July 2013. The Commission published the Level 2 Regulation (the implementing measures underling various parts of the Directive) (the Level 2 Regulations) on 19 December 2012.	The Directive affects all EU managers of funds other than UCITS funds, and all non-EU managers of funds seeking to market in the EU (regardless of whether the fund is based in or outside the EU). *Recent developments*: At **EU** level, the Commission's Level 2 delegated Regulation creates a single rulebook for all AIFMs. The Level 2 Regulation will have direct effect and will be likely be incorporated by reference in Member States' rulebooks. At **EU** level, ESMA published the official version of its guidelines on sound remuneration policies under the AIFM Directive in July 2013. In the **UK**, the Treasury has the final version of its implementing instrument, The Alternative Investment Fund Managers Regulations 2013. The FCA published its final version of its new FUND rulebook, changes to COBS and other rule books, and final Perimeter Guidance, covering the implementation of the AIFM Directive into the FCA's rulebook, the various categories of AIFM which the FCA will authorise and the applicability of various parts of the existing rulebook to AIFMs. The FCA has published application forms for authorisation of AIFMs and draft notification forms for the UK's national private placement regime under the AIFM Directive. The FCA will accept submissions for private placements from 22 July 2013. In **France**, the draft regulation implementing the AIFM Directive in the French Monetary and Financial Code was published on 17 April 2013. The revised part relating to managers from the general regulation of the AMF (book III) has now also been published on 12 June 2013. The relevant part on products from the general regulation of the AMF (book IV) should be published on end July. *(continued on next page)*	Click here for a copy of the Directive. Click here for a copy of the Level 2 Regulation. Click here for ESMA's final guidelines on "Key concepts of the AIFM Directive". Click here for the FCA's AIFM Directive page. Click here for the FCA policy statement containing the final version of its amended rulebooks. Click here for the HM Treasury regulations. Click here for the ESMA Remuneration Guidelines. Click here for the HM Treasury Q&A.

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Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Alternative Investment Fund Managers Directive	EU	The Directive came into force on 21 July 2011. Implementation by Member States is required by 22 July 2013. The Commission published the Level 2 Regulation (the implementing measures underling various parts of the Directive) (the Level 2 Regulations) on 19 December 2012.	*(continued from previous page)* The current drafts, seem to follow the AMF presentation from January this year. The draft regulation intends to (i) consolidate the rules for French asset management companies to create a single category of asset manager, whether regulated under AIFMD, UCITS or MiFID, with the same conditions for authorisation; and (ii) simplify the range of fund products which may be offered to French investors, which will be UCITS, professional AIF, non-professional AIF and "other funds", including non-AIF single non regulated fund. In this respect it is worth noting that the AMF issued in July guidelines on French investment schemes further to the implementation on AIFMD. The draft regulation also intends to simplify the range of minimum investments with a simple distinction between no minimum investment amounts for retail investors and 100,000 euros for professional investors. The draft implementing regulation also proposes to create a French "professional specialized fund" which will be structured in order to compete with the Irish Qualified Investment Fund (QIF) or Luxembourg Specialised Investment Fund (SIF), with a simplified regulatory approval procedure. This fund will be in the form of a corporate entity (SICAV-SA, SAS and perhaps *société en commandite* (i.e. French limited partnership)) or an FCP. The draft regulation also provides that, if an AIF has at least one retail investor, even though the manager of the fund would fall within the scope of the 100/500 million thresholds exemption, such an AIF would be required to appoint a depositary and its manager must be authorised under the AIFM Directive. *(continued on next page)*	Click here for a copy of the Directive. Click here for a copy of the Level 2 Regulation. Click here for ESMA's final guidelines on "Key concepts of the AIFM Directive". Click here for the FCA's AIFM Directive page. Click here for the FCA policy statement containing the final version of its amended rulebooks. Click here for the HM Treasury regulations. Click here for the ESMA Remuneration Guidelines. Click here for the HM Treasury Q&A.

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Alternative Investment Fund Managers Directive	EU	The Directive came into force on 21 July 2011. Implementation by Member States is required by 22 July 2013. The Commission published the Level 2 Regulation (the implementing measures underling various parts of the Directive) (the Level 2 Regulations) on 19 December 2012.	*(continued from previous page)* A one year grandfathering period until the 21 July 2014 has been foreseen by French regulation. At this stage French management companies received from the AMF (i) the updated AMF schedule (“*grille d’agrément*”) to be completed and returned by 22 July 2013 and (ii) a reply form (“*bulletin réponse*“) related to the situation of the management company to be returned by 22 July 2014. During the grandfathering period a simplified approval procedure has been set up for existing management companies. A “tick the box form” has to be fulfilled by which management companies undertake to comply with AIFMD requirements such as remuneration, valuation, reporting and delegation rules. This declarative approach will be followed by follow-up controls by the AMF to ensure that the management company complies with the AIFMD requirements. In **Germany**, the law implementing the AIFMD (KAGB) was approved by the legislator on 16 May 2013. It will enter into force on 22 July 2013. A one year grandfathering period until 21 July 2014 to comply with the German implementation of the Directive will apply to all existing funds and their AIFMs. According to the bill, Germany will abolish private placements with immediate effect, with an exception for ongoing private placements (i.e. those started before 21 July 2013) which will be permitted until 21 July 2014. After this date a full marketing notification to BaFin for any type of distribution will be required. *(continued on next page)*	Click here for a copy of the Directive. Click here for a copy of the Level 2 Regulation. Click here for ESMA’s final guidelines on “Key concepts of the AIFM Directive”. Click here for the FCA’s AIFM Directive page. Click here for the FCA policy statement containing the final version of its amended rulebooks. Click here for the HM Treasury regulations. Click here for the ESMA Remuneration Guidelines. Click here for the HM Treasury Q&A.

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Alternative Investment Fund Managers Directive	EU	The Directive came into force on 21 July 2011. Implementation by Member States is required by 22 July 2013. The Commission published the Level 2 Regulation (the implementing measures underling various parts of the Directive) (the Level 2 Regulations) on 19 December 2012.	*(continued from previous page)* Most German closed-ended funds (often organized as a limited partnership (e.g. as a *Kommanditgesellschaft*)) have only recently (from 1 June 2012) been required to submit marketing notifications to BaFin for their distribution in Germany and were not obliged to obtain permissions for their management companies (i.e. their AIFM). Under the bill, such funds will have to submit new marketing notifications to BaFin and apply for permissions for their AIFMs for the first time. Since notifications/applications in some cases will have to be submitted to BaFin no later than 1 January 2014 (due to applicable periods for assessment by BaFin) and that initially the process for notification and application will be time consuming, clients should start with the necessary actions as soon as possible after the new law comes into force. In **Luxembourg**, the Parliament passed the law on the transposition of the AIFM Directive on 15 July 2013. In addition to implementation of the Directive, the new law also covers other related changes that will have an impact on the legislation applicable to Luxembourg investment funds. The law provides for the creation of Luxembourg AIFMs as well as for the possibility of UCITS management companies to be authorised as AIFMs. Non-UCITS management companies will be limited to managing non-AIFs and small-AIFs opting to be out of scope of the Directive. The law also adds a new category of Professional of the Financial Sector (PSF), i.e. depositary of an AIF; introduces a Special Limited Partnership (*société en commandite spéciale*) which is similar to the English limited partnership and updates the current Limited Partnership (*société en commandite simple*) and partnership limited by shares (*société en commandite par actions*) regimes. *(continued on next page)*	Click here for a copy of the Directive. Click here for a copy of the Level 2 Regulation. Click here for ESMA's final guidelines on "Key concepts of the AIFM Directive". Click here for the FCA's AIFM Directive page. Click here for the FCA policy statement containing the final version of its amended rulebooks. Click here for the HM Treasury regulations. Click here for the ESMA Remuneration Guidelines. Click here for the HM Treasury Q&A.

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Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Alternative Investment Fund Managers Directive	EU	The Directive came into force on 21 July 2011. Implementation by Member States is required by 22 July 2013. The Commission published the Level 2 Regulation (the implementing measures underling various parts of the Directive) (the Level 2 Regulations) on 19 December 2012.	*(continued from previous page)* In **Ireland**, the Central Bank is using the implementation of the Directive as an opportunity to redesign the current regulatory framework for Irish alternative investment funds and has issued a consultation taking the form of a draft AIF handbook replacing the existing non UCITS Notices and Guidance Notes, representing a consolidated version of the regulatory provisions governing AIFs. The key changes proposed are: (i) removal of the promoter regime; (ii) replacement of the Qualifying Investors Fund regime with an enhanced Qualifying Alternative Investor Fund regime; (iii) introduction of share class flexibility within funds or sub-funds requiring 'fair' treatment of shareholders (rather than 'equal' under current regime); (iv) replacement of Irish prime brokerage rules with the Directive's criteria; (v) enhancement of the retail AIFs regime; and (vi) elimination of the Professional Investor Fund regime. The Central Bank is now accepting applications for authorization under the AIFM Directive. In **Malta**, the Malta Financial Services Authority (MFSA) published its new Investment Services Rulebooks on 27 June 2013, comprising updated rulebooks for investment managers which wish to be licensed as AIFMs in Malta and collective investment schemes to be managed and/or marketed under the Directive. The MFSA is now accepting applications for licences from managers which wish to be authorised as AIFMs, and from existing licence holders which wish to convert to an AIFM licence. Notably, the MFSA has confirmed that it will only apply the remuneration rules under the Directive and ESMA's Guidelines to the AIFM and not to any delegate of the AIFM. *(continued on next page)*	Click here for a copy of the Directive. Click here for a copy of the Level 2 Regulation. Click here for ESMA's final guidelines on "Key concepts of the AIFM Directive". Click here for the FCA's AIFM Directive page. Click here for the FCA policy statement containing the final version of its amended rulebooks. Click here for the HM Treasury regulations. Click here for the ESMA Remuneration Guidelines. Click here for the HM Treasury Q&A.

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Alternative Investment Fund Managers Directive	EU	The Directive came into force on 21 July 2011. Implementation by Member States is required by 22 July 2013. The Commission published the Level 2 Regulation (the implementing measures underling various parts of the Directive) (the Level 2 Regulations) on 19 December 2012.	*(continued from previous page)* *Recommended actions*: The AIFM Directive will have a substantial impact on authorisation of fund managers, their structure, their operations and the manner in which their funds are run. Firms should consider whether they are in scope, which entity should be authorised as the AIFM, the required new compliance policies and procedures and the required additional regulatory capital. Firms will need to consider their marketing arrangements in the EU, whether they want to use the passport and the additional compliance burden involved.	Click here for a copy of the Directive. Click here for a copy of the Level 2 Regulation. Click here for ESMA's final guidelines on "Key concepts of the AIFM Directive". Click here for the FCA's AIFM Directive page. Click here for the FCA policy statement containing the final version of its amended rulebooks. Click here for the HM Treasury regulations. Click here for the ESMA Remuneration Guidelines. Click here for the HM Treasury Q&A.

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MiFID II	EU	The Commission published in October 2011 a proposed directive and regulation to amend MiFID (MiFID II). MiFID II is currently subject to negotiation between the European Parliament and the Council of the EU. The Council of the EU confirmed that it had agreed a general approach on MiFID II on 21 June 2013. The European Parliament will consider MiFID II in plenary session in October 2013. MiFID II is expected to be implemented between mid 2014 and January 2015.	The MiFID II proposals include (i) creation of a new type of trading venue within the regulatory framework, the organised trading facility (OTF), capturing all forms of organised trading that do not match existing categories; (ii) significantly increased regulation of commodities trading, including introducing a position reporting obligation and powers for regulators to intervene in trading activity; (iii) new powers for regulators to ban or restrict types of financial products; (iv) new safeguards on algorithmic and high frequency trading activities (mainly to address market volatility); (v) a new regime for 3rd countries which abolishes the UK's overseas person exemption and replaces it with a requirement for overseas firms providing services into Europe to obtain a form of authorisation and (vi) new pre and post trade transparency rules for non-equity products, including bonds and commodities, similar to the transparency rules which apply to regulated equity markets. *Recent developments*: The indicative date for the first reading by the European Parliament of MiFID II is 8 October 2013.	Click here for the Council's proposed general approach to the MiFID II Directive and click here for the Council's proposed general approach to the regulation.
CRD IV	EU	The final texts of the Capital Requirements Regulation (CRR) and the CRD IV Directive, containing new capital requirements for credit institutions and MiFID investment firms, were published on 27 June 2013.	Investment firms currently subject to the Capital Requirements Directive will be faced with higher capital requirements and new governance requirements. *Recent developments*: The European Parliament adopted the proposed CRD IV Directive on 16 April 2013, including the cap on bankers' bonuses. The final texts of the CRR and the CRD IV Directive were published on 27 June 2013. Member states must transpose the CRD IV Directive and apply its provisions from 31 December 2013. The FCA has earlier published its approach to implementing transitional provisions in CRD IV. *Recommended actions*: Investment firms subject to CRD IV will need to consider the impact on their capital requirements. UK firms should study the changes which the FCA will propose to its BIPRU and GENPRU rulebooks.	Click here for the final text of CRD IV. Click here for the final text of CRR. Click here for the FCA's statement on CRD IV implementation and click here for the FCA's guidance on CRD IV reporting.

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MiFID Remuneration Policies	EU	ESMA published final guidelines on remuneration policies and practices under MiFID on 11 June 2013.	Both ESMA and the FCA have published rules under MiFID conflicts of interest rules principally focussed on remuneration of staff who sell financial products to the retail market. Both sets of rules are closely aligned. The MiFID guidelines focus on incentives paid to staff, in particular sales staff and tied agents, whose remuneration may create inappropriate incentives to act against the best interests of their clients. The FCA will adopt the ESMA guidelines in due course. *Recommended actions*: Firms should review compliance of their remuneration schemes for sales staff with the FCA's requirements without delay.	Click here for ESMA's final guidelines. Click here for the FCA's final guidance.
Dodd-Frank – Commodity Futures Trading Commission exemptions from registration	US – SEC and CFTC	The CFTC has adopted final regulations on the use of exemptions from registration for sponsors of private funds.	The CFTC has adopted final regulations which modify and remove certain CFTC exemptions widely used by sponsors of private funds. The CFTC Staff has issued multiple no-action letters that may temporarily or permanently assist qualifying sponsors of private funds with avoiding CFTC registration. The Department of the Treasury determined that certain foreign currency forwards and foreign currency swaps are not considered "swaps" for some CFTC jurisdictional issues including whether the contracts are counted toward the CPO de minimis trading registration exemption. The position limits rule was vacated and remanded to the CFTC in autumn 2012 for further work on the CFTC's cost-benefit analysis. The CFTC Staff recently made available no-action relief from the fingerprinting requirement for associated persons ("APs") residing outside the United States who takes the necessary steps to avail themselves of the relief as outlined in the letter. This was a companion letter to relief the CFTC Staff previously made available to principals. *(continued on next page)*	Dechert has produced a number of *DechertOnPoints* on the CFTC rules under Dodd-Frank: CFTC Changes Rules Affecting Public and Private Funds CFTC Issues No-Action Relief Extending Compliance Date for Amended Rules 4.5 and 4.13(a)(4) to December 31, 2012 CFTC Staff Releases Responses to Frequently Asked Questions Regarding Rule Amendments Affecting CPOs and CTAs.

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Dodd-Frank – Commodity Futures Trading Commission exemptions from registration	US – SEC and CFTC	The CFTC has adopted final regulations on the use of exemptions from registration for sponsors of private funds.	*(continued from previous page)* *Recommended actions*: Private fund sponsors must be operating under an effective registration as a "commodity pool operator" (CPO) or be relying on the remaining *de minimis* commodity interest trading exemption on a fund-by-fund basis. If a private fund sponsor can qualify for no-action relief, the sponsor should have claimed the relief. Registered CPOs must be filing CFTC Form CPO-PQR or NFA Form PQR on a quarterly basis depending on the CPO's size. Registered commodity trading advisors (CTAs) are likely to begin filing quarterly NFA Form PR for the quarter ending September 30, 2013, and all registered CTAs will file CFTC Form CTA-PR for the calendar year end 2013. For CPOs whose registration was effective as of March 31, 2013, the first filing is due May 30, 2013. Any registered CPO or CTA that trades swaps needs to designate itself as a "swap firm" through the National Futures Association online registration system. This designation is not to be confused with being a swap dealer. In addition, any AP involved in soliciting interests into commodity pools or commodity accounts in which swap trading takes place, and any AP who supervises those sales persons, should amend its NFA Form 8-R to be designated as a "swaps AP."	Dechert has produced a number of *DechertOnPoints* on the CFTC rules under Dodd-Frank: CFTC Changes Rules Affecting Public and Private Funds CFTC Issues No-Action Relief Extending Compliance Date for Amended Rules 4.5 and 4.13(a)(4) to December 31, 2012 CFTC Staff Releases Responses to Frequently Asked Questions Regarding Rule Amendments Affecting CPOs and CTAs.

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Dodd-Frank – rules on major swap participants	US – SEC and CFTC	The SEC and CFTC have adopted final rules on "major swap participants", "major security-based swap participants", "swap" and "security-based swap".	The CFTC has adopted final rules on "major swap participants", "major security-based swap participants", "swap" and "security-based swap". *Recommended actions*: Investment managers will need to determine if their status has changed to "major swap participant", which will depend on the scale of their trading in OTC derivatives. The scope of the definition of "commodity interest" now includes many types of OTC derivatives. A fund trading OTC derivatives may be a "commodity pool" and subject to the US CFTC where it was not previously, to the extent the fund has any US investors. Where trading swaps with a U.S. nexus and to the extent not already completed, investment managers should be in contact with their swaps dealers to complete the necessary phases of the ISDA Dodd-Frank Act Protocol.	Dechert has produced a number of *DechertOnPoints*: CFTC Finalizes Futures and Swaps Position Limit Rules CFTC Finalizes Swap Data Recordkeeping and Reporting Requirements CFTC Adopts Customer Property Segregation and Other Swap Regulations, Proposes Volcker Rule Impact of CFTC Swap Regulations on Structured Finance Industry.
Dodd-Frank – application of U.S. rules in cross-border contexts	US -- CFTC	The CFTC has issued guidance regarding the definition of a U.S. person and an exemptive order regarding compliance with certain swaps regulations. SEC cross-border guidance is still in proposed form.	The CFTC has issued guidance that for purposes of various Dodd-Frank Act rules. A collective investment vehicle that is directly or indirectly majority-owned by U.S. persons, or that has its principal place of business in the U.S., is a U.S. person. There is an exemption from this definition where a collective investment vehicle is publicly offered outside the United States to non-U.S. persons. Collective investment vehicles that are deemed to be U.S. persons will be subject to required swap clearing, trade execution, real-time public swap reporting, large swap trader reporting and swap data record-keeping. Where a collective investment vehicle that is deemed to be a U.S. person enters into a swap with a non-U.S. swap dealer, obligations that would generally fall to the swap dealer (*i.e.*, swap data reporting and recordkeeping) could become the responsibility of the U.S. person collective investment vehicle. The exemptive order provides for a 75 day phase-in period from the date the guidance is published in the U.S. Federal Register, which at the time this regulatory update went to press had not occurred. *(continued on next page)*	Click here for the CFTC's guidance and click here for the exemptive order.

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Dodd-Frank – application of U.S. rules in cross-border contexts	US -- CFTC	The CFTC has issued guidance regarding the definition of a U.S. person and an exemptive order regarding compliance with certain swaps regulations. SEC cross-border guidance is still in proposed form.	*(continued from previous page)* *Recommended actions*: Investment managers need to determine whether their funds are U.S. persons and if so, whether the funds trade swaps with any non-U.S. counterparties. Investment managers should assess whether their funds are trading swaps for which U.S. persons are currently subject to mandatory central clearing through U.S. clearing-houses and negotiate relevant trading documentation to permit clearing.	Click here for the CFTC's guidance and click here for the exemptive order.

Part C – Regulation of Investment Funds

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
US FATCA	US	The US Foreign Account Tax Compliance Act became law in March 2010. FFIs must register with the IRS through an online "Portal" by 25 April 2014 to be included on an IRS list of participating and registered deemed-compliant FFIs to be published on 2 June 2014 and updated monthly. Non-participating FFIs will be subject to withholding beginning on 1 July 2014 (for withholding on US source dividends, interest and other US source income) and 1 July 2017 (for withholding on gross proceeds). Withholding on non-US source passthru payments will not occur before 2017. New account opening procedures generally must be implemented by 1 July 2014. Fund managers may act as "sponsoring entities" on behalf of funds that they manage, in which case such managers will serve as a control point of contact with the IRS and the Portal.	FATCA is a new reporting and withholding regime intended to prevent US investors from evading tax by investing through foreign entities. FATCA requires foreign financial institutions (FFIs) to report information to the US IRS regarding their US account holders or otherwise suffer potential US withholding taxes. *Recent developments*: An IRS Notice issued on 12 July 2013 generally postponed the registration procedures by six months and provides guidance for FFIs in jurisdictions that have signed but not yet concluded an intergovernmental agreement (IGA). The UK government has signed an IGA with the US government to allow "Reporting UK Financial Institutions" to fulfil their reporting obligations on US account holders by reporting directly to the UK Revenue. The IGA also confirms which types of accounts are within scope and the types of UK regulated entities which are "deemed compliant" FFIs and not subject to the requirements. The Irish government has also signed an IGA which is similar to the IGA signed by the UK government. Reporting Irish Foreign Financial Institutions will report directly to the Irish Revenue Commissioners, without needing to withhold on or terminate recalcitrant account holders. Other jurisdictions which have concluded IGAs are Denmark, Mexico, Ireland, Switzerland, Norway, Spain, Germany and Japan, although many other jurisdictions are discussing or investigating IGAs with the US government. *Recommended actions*: Managers should consider acting as sponsoring entities for their managed funds and appointing third party, service providers to carry out the funds' FATCA obligations. *(continued on next page)*	Click here for *DechertOnPoint* 'Final Proposed FATCA Regulations Issued' Click here for a copy of the US-UK IGA. Click here for the Dechert OnPoint "Revised timeline for Implementing FATCA".

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
US FATCA	US	The US Foreign Account Tax Compliance Act became law in March 2010. FFIs must register with the IRS through an online "Portal" by 25 April 2014 to be included on an IRS list of participating and registered deemed-compliant FFIs to be published on 2 June 2014 and updated monthly. Non-participating FFIs will be subject to withholding beginning on 1 July 2014 (for withholding on US source dividends, interest and other US source income) and 1 July 2017 (for withholding on gross proceeds). Withholding on non-US source passthru payments will not occur before 2017. New account opening procedures generally must be implemented by 1 July 2014. Fund managers may act as "sponsoring entities" on behalf of funds that they manage, in which case such managers will serve as a control point of contact with the IRS and the Portal.	*(continued from previous page)* Managers also will need to determine whether their funds fall within any "deemed compliant" category, and will need to determine the extent of their reporting or withholding responsibilities and amend account opening procedures as necessary to comply with FATCA. Documentation, including offering documents, administration agreements, distribution agreements, management agreements and ISDA documentation may need FATCA provisions.	Click here for *DechertOnPoint* 'Final Proposed FATCA Regulations Issued' Click here for a copy of the US-UK IGA. Click here for the Dechert OnPoint "Revised timeline for Implementing FATCA".

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
UCITS IV, V and VI Directives	EU	The European Parliament published its adopted text of UCITS V on 4 July 2013. The draft will now go to the European Parliament for consideration. UCITS V is likely to be implemented towards the end of 2015. Separately, the Commission has published a consultation paper on further changes to the UCITS regime (UCITS VI). The Commission expects to publish its legislative proposal for UCITS VI in October 2013.	*Recent developments:* The key changes made to UCITS by UCITS V relate to the UCITS depositary function, remuneration and sanctions for breach of the rules. The rules relating to the depositary function are similar to the equivalent provisions in the AIFM Directive. The text of the version of UCITS V adopted by the European Parliament did not include the "bonus cap", but includes similar requirements in relation to variable remuneration as in the AIFM Directive. In relation to UCITS VI, the topics which the Commission is consulting on include eligible assets and use of derivatives, efficient portfolio management (EPM) techniques, the use of OTC derivatives, extraordinary liquidity management tools and passporting rights for UCITS depositaries.	Click here for the adopted text of UCITS V and here for Commission FAQs. Click here for the Commission's consultation on UCITS VI.
FCA's Retail Distribution Review	UK – FCA	The FCA published a policy statement in April 2013 with new rules which ban the payment of commission from product providers to platforms. These rules enter into force on 6 April 2014.	The FCA has published final text of the conduct of business rules which ban payments from product providers to platforms and cash rebates from product providers to clients. The rules enter into force on 6 April 2014, although firms have the benefit of a transitional period that runs until 5 April 2016 for legacy payments. In broad terms, platforms are services which provide execution and custody of investments from more than one product provider. *Recommended actions:* These rules apply to any investment manager or fund paying commission to platforms, which typically distribute products on an execution only basis. Firms should make available any "RDR ready" share class to platforms and check the terms of their distribution agreements with platforms to ensure they are compliant with the RDR.	Click here for the FCA's RDR page.

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Proposed EU regulation of packaged retail investment products (PRIPs)	EU	The Council of the EU confirmed that it had agreed a general approach on the PRIPs Regulation on 26 June 2013. The Commission published the final text of its PRIPs legislative proposal on 9 July 2012. The Regulation is likely to be implemented at the end of 2015.	PRIPs are all types of investment products "where the amount repayable to the investor is subject to fluctuations because of exposure in reference values or to the performance of assets which are not directly purchased by the investor." This covers insurance based products, structured term deposits and virtually all investment funds. The Commission has proposed a requirement to provide a "key information document" (KID) when the product is made available to retail investors, applying the same principles in the UCITS Directive's KIID.	Click here for the Council's proposed general approach to the PRIPs Regulation.
FCA proposal to restrict retail distribution of unregulated collective investment schemes	UK – FCA	The FCA published on 4 June 2013 a policy statement with its final rules on the retail distribution of unregulated collective investment schemes. The rules come into force on 1 January 2014.	The FCA has revised the categories of investors to whom an authorised person can promote an unregulated scheme. It has restricted the ability of financial advisers to promote a scheme to any retail investor on the basis of a suitability check, and to any person who is already a participant in a scheme (COBS 4.12 table). The FCA has introduced new exemptions for certified high net worth investors, certified and self-certified sophisticated investors, for the promotion of US mutual funds to US citizens in the UK and UCITS funds approved outside the UK but not in the UK. The following schemes are not within the new marketing restriction: securities issued by SPVs which pool investment in listed or unlisted shares or bonds; exchange traded products; overseas investment companies which would be investment trusts if they were in the UK; REITs and venture capital trusts.	Click here for the FCA' s policy statement.

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Shadow banking	EU	The European Parliament announced on 20 November 2012 that it had adopted a non-legislative resolution on shadow banking. The Financial Stability Board (FSB) published a set of policy recommendations in relation to "shadow banking" in November 2012. The FSB will finalise its policy recommendations by the time of the G20 summit in September 2013. IOSCO has issued policy recommendations to provide the basis for common standards for the regulation and management of money market funds across jurisdictions. We expect to see a communication from the Commission on shadow banking together with a proposal for a Regulation on money market funds in the autumn of 2013.	According to the FSB policy recommendations, any investment fund which extends or trades in credit (non-bank credit intermediation) or is a money market fund may be subject to regulatory supervision, on the basis that such funds raise systemic risk concerns. The European Parliament's resolution includes suggestions such as extending capital requirements to all unregulated entities, imposing limits on the complexity of financial products or considering whether shadow banking entities linked to a bank should be included on the bank's balance sheet. The Commission's draft legislation is likely to take the form of amendments to the UCITS and AIFM Directives and a separate Regulation on money market funds.	Click here for the FSB's page on shadow banking.

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
New legislation for Real Estate Investment Trusts (REITs)	Ireland	The new Finance Act 2013 sets out the criteria a company must satisfy in order to be classified as an REIT.	REITs will be established as listed companies and may be used to invest in a diverse range of rental investment properties in a tax efficient manner. Where the qualifying criteria are met, the REIT will be exempt from corporation tax on qualifying income and gains. Stamp duty is payable on acquisition of assets and share transfers. Where a fund wishes to convert into a REIT there is a deemed sale and reacquisition by the company immediately before and immediately after obtaining REIT status. The REIT is required to be listed, derive at least 75% of its income from property rental business, distribute at least 85% of its profits annually to its investors and 75% or more of the aggregate market value of its assets must be assets of the property rental business. Distributions will be subject to dividend withholding tax (currently 20%) and will be taxable in the hands of the shareholders. This new structure should encourage investment in property by facilitating investment from investors seeking income yielding investments. However, given the conditions generally applicable to REITs, such as borrowing restrictions and risk diversification requirements, in many cases the existing regulated and unregulated structures will continue to be the most suitable vehicles for investments in property which do not fit the profile for a REIT.	Click here for the Irish REITs proposal.
New Corporate Structure for Funds (SICAV)	Ireland	The Irish Minster for Finance has approved in principle the development of legislation for a new corporate structure (a SICAV). Legislation is expected in 2013.	The SICAV will meet US check the box taxation requirements and reduce administrative costs on funds by removing the need for compliance with various requirements of Irish company law. Once the legislation is introduced, it will still be possible to establish a fund as a variable capital investment company pursuant to Part XIII of the Companies Act 1990 (VCC). It will also be possible for existing VCCs to convert to a SICAV.	Click here for the legislative proposal.

Part D – Other Developments

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Consultation opens on proposed: 1) Prosecutors Code of Practice on Deferred Prosecution Agreements (DPAs); and 2) Sentencing Guidelines on Fraud, Bribery and Money Laundering Offences published by the Sentencing Council.	England and Wales	Consultation on draft Code of Practice on DPAs and consultation on Sentencing Council's draft Guidelines both published on 27 June 2013. The consultation periods end on 20 September 2013 and 4 October 2013 respectively.	On 25 April 2013, the UK Crime and Courts Act (the Act) received Royal Assent, bringing DPAs into UK law for the first time. DPAs are not immediately available however as the Act requires guidance to be produced on the principles to be applied in considering whether to offer or enter into a DPA. On 27 June 2013 the Director of the Serious Fraud Office and the Director of Public Prosecutions took the first step to address this requirement by opening a consultation on a draft Code of Practice (the Code). On the same day the Sentencing Council opened its consultation on the proposed Sentencing Guidelines for Fraud, Bribery and Money Laundering offences (the Sentencing Guidelines). The key provisions for companies under the draft Code and Sentencing Guidelines include: **Dilution of Evidential Standard** It is proposed that DPAs will be available in cases not meeting the normal standard of evidence required for prosecution. Under the draft Code, prosecutors must decide: (a) whether the evidence provides a realistic prospect of conviction; or (b) whether there is "*at least a reasonable suspicion*" that the commercial organisation has committed the offence and that there are "*reasonable grounds for believing that a continued investigation would provide further evidence within a reasonable period of time*" which, taken together, would provide a realistic prospect of conviction. If either of the above evidential thresholds are met, prosecutors must be satisfied that a DPA would be in the public interest. *(continued on next page)*	Click here for the draft DPA Code: Click here for the *DechertOnPoint* "Deferred Prosecution Agreements: A Powerful New Tool for UK Prosecutors?" Click here for the Sentencing Council's draft Guidelines.

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Consultation opens on proposed: 1) Prosecutors Code of Practice on Deferred Prosecution Agreements (DPAs); and 2) Sentencing Guidelines on Fraud, Bribery and Money Laundering Offences published by the Sentencing Council.	England and Wales	Consultation on draft Code of Practice on DPAs and consultation on Sentencing Council's draft Guidelines both published on 27 June 2013. The consultation periods end on 20 September 2013 and 4 October 2013 respectively.	*(continued from previous page)* **No Protection for Legal Professional Privilege and Expectation of Assistance in Action against Individual Employees** No provision is made in the draft Code for the protection of legal professional privilege. Self-reporting of wrongdoing may lead to companies waiving privilege over documents. The Code also makes it clear that companies are expected to proactively assist prosecutors (e.g. by making witnesses available) in any action taken against individuals: "*It will ordinarily be appropriate that those individuals be investigated and where appropriate prosecuted*. [The company] *must ensure in its provision of material as part of the self-report that it does not withhold material that would jeopardize an effective…prosecution of those individuals*." **Financial Penalties – Use of U.S. Style Multiplier for corporates** The Sentencing Guidelines provide an insight into the likely size of fines against companies guilty of the offences of fraud, bribery and/or money laundering. In extreme cases companies can expect to be fined up to 400 times the amount obtained or saved through offending. A discount of 1/3 may be applied to companies who enter a DPA (the same as for an early guilty plea) and there may also be "*an additional reduction where an organization assists, for example, in the investigation or prosecuting of offenders by others*." **No Guarantees** The draft Code says that "*an invitation to enter into DPA discussions is not a guarantee that a DPA will be offered at the conclusion of the discussions*.", documents provided to prosecutors during DPA negotiations would also be available to prosecutors for use in a subsequent prosecution, should negotiations fail.	Click here for the draft DPA Code: Click here for the *DechertOnPoint* "Deferred Prosecution Agreements: A Powerful New Tool for UK Prosecutors?" Click here for the Sentencing Council's draft Guidelines.

Regulatory Calendar – Key Milestones

AIFMD

Implementation of the AIFMD into local law by Member States is required by **22 July 2013**.

In the UK, firms managing AIFs as of **22 July 2013** can take advantage of the transitional provisions.

EMIR

The rules on portfolio reconciliation and compression, and dispute resolution come into force on **15 September 2013**.

2013 **Q3** **Q4**

UCITS VI

The Commission is expected to adopt its legislative proposal for UCITS VI in **October 2013**.

REGULATORY CALENDAR – KEY MILESTONES (cont'd)

2014

Q1 | Q2 | Q3 | Q4

FCA Distribution Rules

The FCA's new rules on distributing unregulated collective investment schemes come into force on **1 January 2014**.

CRD IV

CRD IV comes into force on **1 January 2014**.

EMIR

The obligation to report credit and interest rate derivatives, and all other classes of derivatives to trade repositories starts on **1 January 2014**.

FATCA

The deadline for FFIs to enter into an agreement with tax authorities, or register as deemed compliant, is **25 April 2014**.

RDR

FCA rules on payments to platforms come into force on **6 April 2014**.

EMIR

ESMA states that the first clearing obligation will not apply before **June 2014**.

Solvency II

Implementation of Solvency II Directive is expected in **July 2014**.

FATCA

The first date for withholding under FATCA to apply is **1 July 2014**.

AIFMD

The deadline for UK managers managing AIFs as of **22 July 2013** to be compliant with the AIFMD and to have submitted an application for authorisation is **22 July 2014**.

MiFID II

Mid-2014 is the earliest expected implementation date of MiFID II.

Financial Transactions Tax

The possible implementation date of the FTT is 31 **December 2014**.