



January 2009

## InVest

This month's round-up of developments affecting the wealth management industry sees CESR updating its Q&As on MiFID and prospectus rules, the FSA publishing its findings from the COBS post-implementation review, HM Treasury launching a series of consultations, ...

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## General News

### Charlie McCreevy Proposes Actions To Face The Current Crisis

On 4 December 2008, Charlie McCreevy, European Commissioner for Internal Market and Services, gave a speech at the Institute of Chartered Accountants in England and Wales on "Financial market controversies and the outlook for next year". Mr McCreevy proposed the following five actions to get out of the current financial crisis:

**"1. Transparency and Disclosure.** The industry has to act to disclose what they have and where they have it. We need accounting standards that give us a true picture and not just when the economy is working well. And



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we need a global accounting standard setter with 21st century standards of governance.

**II. Regulation of risk management and prudential oversight.** The EU needs to adopt the revised Capital Requirements Directive that I proposed in October and it needs to do so fast. We need Solvency II adopted and we need it fast. And we need a roadmap on how the risks from credit derivatives can be mitigated and we need it fast.

**III. Incentives.** Perverse incentives stemming from executive compensation schemes should go and they should go now. My proposals on securitization need to be adopted and they need to be adopted now. Conflicts of interest within rating agencies need to be tackled and they need to be tackled now.

**IV. Oversight and Crisis Management.** We have got to move towards much better oversight to detect and prevent crises or imbalances in future. It is why President Barroso set up a High Level Group on cross-border supervision under Jacques de Larosière to produce recommendations by March next year. And we need better crisis management mechanisms.

**V. International Cooperation.** And finally, we need much, much greater international cooperation. The G20 Summit took an important step forward, but we have to go much further and translate this into change on the ground. ... We need to cooperate whenever and wherever with our third country partners. For this reason, I was very glad to see that on accounting standards, we completed the move to dropping reconciliation, we agreed on equivalence for certain third countries and I welcome the courageous moves of the SEC on moving to IFRS for US issuers."

Please click [here](#) for a copy of the speech. (Source: *European Union, Rapid Press Release, SPEECH/08/676, 04/12/2008*) - [Back](#)

## [Independent Academic Research Indicates Lack Of Impact Of Short Selling Restrictions Globally](#)

The International Securities Lending Association, the Alternative Investment Management Association and the London Investment Banking Association published

Academic research, which finds no strong evidence that the emergency short selling restrictions imposed in various markets around the world have changed the behaviour of stock returns.

The researchers examined daily returns on UK, US, Italian, French and German shares before and after the introduction of restrictions on short selling, including shares which are subject to the restrictions, and those which are not.

The main findings of the research are:

- No strong evidence that restrictions on short selling changed the behaviour of stock returns. Stocks subject to the restrictions behaved very similarly both to how they behaved before their imposition and to how stocks not subject to the restrictions behaved.
- Comparing behaviour across countries where the nature of the restrictions differed, the authors found no systematic patterns consistent with the expected effect of the new regulations, i.e. no evidence of a reduced probability of large price falls.
- The authors also found no sign of any detrimental impact of the constraints in terms of reduced efficiency of pricing.
- Regression analysis suggested that changes in stock returns were driven mainly by other factors affecting the financial sector as a whole rather than the restrictions on short selling. That is, some systematic changes in the behaviour of financial sector stocks could be discerned, but no strong evidence of a systematic impact of the restrictions could be identified.

The report refers to one caveat which relates to the shortness of the post-restrictions period in most countries, which does not appear to the authors to change the robustness of their findings.

On the basis of this research, the associations see no case for continued bans on short selling as there is no strong evidence that these have been effective in reducing share price volatility or limiting share price falls.

The research is available at <http://www.cass.city.ac.uk/media/stories/resources/the-impact-of-short-sales-restrictions.pdf>. (Source: *AIMA, press release, 17 December 2008*) - [Back](#)



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## FSA Response To Practitioner Panel Survey

On 11 December 2008 the FSA published a press release responding to the latest survey of regulated firms by the independent Financial Services Practitioner Panel.

Overall, the survey shows that Firms consider strong regulation a good thing. However, the burden that FSA regulation places on firms – of all types and sizes – remains a source of significant concern. Also the survey showed that that firms are more satisfied where they have had recent contact – or enjoy a close relationship – with the FSA. Hector Sants, FSA chief executive, said:

*"[...] However, the FSA recognises that our understanding of firms and their business remains the major area where we need to improve, and this has been identified as a priority for some time. We are taking significant steps to move forward with this and there are already some signs of improvement here.*

*In the future, the Small Firms Enhanced Strategy means that small firms will have more regular contact with us, while the Supervision Enhancement Programme should lead to lower turnover in relationship managers and a better understanding of firms' business, both of which the survey identifies as key to improving firms' satisfaction."*

Please click [here](#) for a copy of the survey. (Source: FSA [press release](#), FSA/PN/150/2008, 11 December 2008) - [Back](#)

## FSA Fines Two Individuals For Market Abuse

On 19 December 2008 published two Final Notices it has issued to Mr Stewart McKegg and Mr Brian Valentine Taylor for market abuse. Mr McKegg was fined £14,411.25 and Mr Taylor was fined £4,642.50.

According to the FSA, Mr McKegg and Mr Taylor were private investors in Amerisur Resources Plc (Amerisur, then known as Chaco Resources Plc). They were individually contacted by Amerisur's broker on 23 May 2007 to inform them of a placing of Amerisur shares to be announced the following day. This was at a substantial discount to the market price. During the telephone calls they were informed that this was inside information and confidential.

Both committed market abuse by selling some or all of their existing shareholding prior to the public announcement of the placement. They both then rebuilt their position in Amerisur stock by subscribing for discounted shares in the placing.

The Final Notices for [Mr McKegg](#) and [Mr Taylor](#) can be found at the FSA website. (Source: FSA [press release](#), FSA/PN/155/2008, 19 December 2008) - [Back](#)

## Egg Fined £721,000 For Serious Failings In Its Sales Of Credit Card Payment Protection Insurance

On 10 December 2008 the FSA announced in a press release that it has issued a Final Notice to Egg Banking plc fining the bank £721,000 for serious failings in its sales of credit card payment protection insurance (PPI).

According to the press release, the FSA found failings in approximately 40 per cent of telephone sales of credit card PPI made by Egg between January 2005 and December 2007. Egg sold PPI either when receiving a customer services call, or when making a sales call to a new customer. When Egg customers said they did not want PPI on their credit cards, the firm directed its sales staff to use techniques to persuade the customer to take the insurance - called 'objection handling'.

Egg stopped telephone sales of credit card PPI, and has agreed to write to customers and pay a full refund plus interest where appropriate.

Please click [here](#) for a copy of the Final Notice. (Source: FSA [press release](#), FSA/PN/149/2008, 10 December 2008) - [Back](#)

## Businessman Fined £35,000 For Lying About FSA Authorisation

According to a FSA press release an Oxfordshire businessman, Mr Mayson Shanti of Marcham, Abingdon has been fined £35,000 by Didcot Magistrate's Court for falsely claiming that his company, Chase Capital Finance Limited (Chase Capital), was authorised by FSA. This is the first time that the FSA has prosecuted an individual for falsely claiming to be authorised.

(Source: FSA [press release](#), FSA/PN/151/2008, 11 December 2008) - [Back](#)



## Regulatory Developments

### CESR Updates Q&As On MiFID

On 19 December 2008 CESR published a second update of the Commonly Agreed Positions regarding questions and answers (Q&A) on MiFID.

The Q&A provide market participants with responses in a quick and efficient manner to everyday questions which are commonly posed to CESR by market participants, CESR Members, or the public generally. The main purpose of the MiFID Q&A is to address issues of practical application, for which a formal consultation process is considered to be unnecessary.

The second update of Q&As on MiFID is available on CESR's website. Please click [here](#). (Source: CESR, [press release](#), 19 December 2008) - [Back](#)

### CESR Updates Q&As Regarding Prospectuses

On 17 December 2008 CESR published the seventh update of the Commonly Agreed Positions regarding Prospectuses, and announced the launch of work on the assessment on the Equivalence of Prospectuses from non-EEA Jurisdictions. The two documents are available via the following links:

- [Frequently asked questions regarding Prospectuses: Common positions agreed by CESR Members 7th Updated Version - December 2008](#)
- [Assessment on the Equivalence of Prospectuses from non-EEA Jurisdictions \(Article 20.1 Prospectus Directive\)](#)

(Source: CESR, [website](#), 17 December 2008) - [Back](#)

### FSA Publishes Interim Findings From COBS Post-implementation Review

On 19 December 2008 the FSA published the 2008 statement on interim findings of the COBS post-implementation review.

This statement sets out the FSA's high-level interim findings about how firms have responded to the introduction of COBS, to the extent that they have been identifiable since their implementation in November last year.

In general, most of the professional advisors and the FSA staff find that the accessibility of COBS has

improved because it is easier to use, understand and navigate than the old COB sourcebook, and that the structure and presentation of the requirements has improved.

For more information on the interim findings please click [here](#). (Source: FSA, *Conduct of Business sourcebook (COBS) post-implementation review: 2008 statement on interim findings December 2008*) - [Back](#)

### FSA Publishes Factsheet On Advice Process

On 10 December 2008 the FSA published the 5th of a series of factsheets focusing on the different areas of the advice process.

The factsheet covers the communication with clients, in particular when preparing and issuing suitability reports and contains various examples of good and poor practices.

Please click [here](#) for a copy of the Factsheet. (Source: FSA, *Improving the quality of your advice process – Communication*, 10 December 2008) - [Back](#)

### FSA Takes Action To Address Pension Transfer Advice Failings

On 05 December 2008 the FSA announced in a press release to take action to improve the quality of advice given to customers to switch into a personal pension or self-invested personal pension (SIPP).

This follows a review which found variable standards across a sample of 30 firms. The review looked at transfers from all types of pension schemes into personal pensions and SIPPs since the A-Day pension tax regime changes (6 April 2006). Unsuitable advice was found in 16% of the 500 transfer cases reviewed. However, this was unevenly spread across the firms reviewed: some were giving suitable advice consistently; but some were found to be giving unsuitable advice at significant levels. In a quarter of firms, all cases reviewed were assessed as suitable; but in another quarter a third or more of the cases reviewed were assessed as unsuitable.

The FSA will be writing to over 4,500 firms that advise on pension transfers, setting out its findings, the standards it expects of firms and the action firms should take to ensure customers receive suitable advice. The FSA will undertake further assessments in the third quarter of 2009. Firms that fail to take steps where necessary will face further action.



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The findings of the review showed that the main causes of unsuitable advice were:

- switches involving extra costs without good reason;
- recommendations that did not match the customer's attitude to risk and personal circumstances;
- failure to explain the need for, or put in place, ongoing reviews when these were necessary; and
- loss of benefits from existing pension schemes without good reason.

The report: ['Quality of advice on pension switching: a report on the findings of a thematic review'](#) is available on the FSA website. (Source: [FSA press release, FSA/PN/147/2008, 05 December 2008](#)) - [Back](#)

## New FSA Webpage On Data Security And Consumer Communications

On 18 December 2008 the FSA added a new page on its website on "data security and consumer communications". The new page contains various examples of good practices firms should employ, where appropriate, to enhance their data security risk assessments, protect consumers and reduce the risk of consumer data being used by criminals.

Please click [here](#) to access the page. - [Back](#)

## New Guidelines For The Prudential Assessment Of Acquisitions And Increases In Financial Holdings

On 18 December 2008 CEBS, CEIOPS and CESR published their guidelines for the prudential assessment of acquisitions and increases in financial holdings as required by Directive 2007/44/EC.

The guidelines define co-operation arrangements amongst supervisors from across financial sectors, in order to ensure an adequate and timely flow of information between them. Furthermore, the guidelines establish an exhaustive and harmonised list of information that proposed acquirers should include in their notifications to the competent supervisory authorities.

These [guidelines \(08-543b\)](#) are accompanied by a [feedback table \(08-543b Annex\)](#) and a [press release \(3L3 18/12/09 MA\)](#). (Source: [CESR, website, 18 December 2008](#)) - [Back](#)

## European Parliament Approves Increase In Bank Deposit Guarantee

According to a press release published on the European Parliament's website, MEPs adopted a report by Christian Ehler to amend existing legislation on deposit guarantee schemes and raise the guarantee level in the event of deposits being unavailable.

The report contains the following proposals :

- *An Agreement to raise the deposit guarantee level* - Members approved the Commission proposal to raise the level of guarantee to at least €50,000 when the new legislation enters into force in June 2009. The proposed increase to €100,000 will only be effective by the end of 2010, as agreed by the Parliament and the Council. MEPs also amended the proposal so that this increase will take effect unless a Commission impact assessment, to be ready by 31 December 2009, suggests it is not financially viable for all Member States. The coverage level will apply to all depositors in all Member States, regardless whether the currency is the Euro or not.
- *Faster payouts and an emergency fund* - MEPs agreed to reduce the payout period, in the event of deposits being unavailable, from three months to 20 days. The extension of this period, up to maximum 10 days, could only be admitted in exceptional circumstances and by approval of competent authorities.

After the approval of Parliament's plenary, the Council has to formally endorse the new legislation and Member States will be required to bring it into force by 30 June 2009 at the latest.

Please click [here](#) for a copy of the report. (Source: [European Parliament, press release, 18 December 2008](#)) - [Back](#)

## ECB Opinion On The Review Of The Electronic Money Directive

Following a request by the European Council, the European Central Bank (ECB) published an opinion on a proposal [set forward](#) by the European Commission on 9 October 2008 for a directive of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC



Whilst the ECB generally supports the review of Directive 2000/46/EC, the ECB also expressed serious concerns regarding the proposal to change the legal definition of electronic money institutions from "credit institution" to "financial institution" as this may have wide-ranging consequences for the conduct of monetary policy.

Please click [here](#) for of 5 December 2008 on a proposal for a Directive on the taking up, pursuit and prudential supervision of the business of electronic money institutions (CON/a copy of the opinion. (Source: *Opinion of the ECB 2008/84*) - [Back](#)

## European Union Agrees On General Approaches On Financial Services

On 2 December 2008 the Economic and Financial Affairs Council of the European Union (**Council**) approved general approaches on four "financial services" dossiers.

In a press release, the Council explained that "the aim of the legislative drafts is to meet the expectations of citizens and market players in relation to the international financial crisis, by raising guarantee levels and reducing repayment periods where a bank cannot pay back deposits, adequately protecting creditors interests and overall financial stability, strengthening protection of insurance policyholders and facilitating cross-border mergers of UCITS."

The dossier focuses on

- Bank deposit guarantee schemes;
- Banks' capital requirements;
- Solvency of insurance undertakings ("Solvency II"); and
- Undertakings for collective investment in transferable securities (UCITS)

Please click [here](#) for a copy of the press release. (Source: *Council of the European Union, 2 December 2008 16562/08 (Presse 352)*) - [Back](#)

## New Legislation & Consultations

### FSA Handbook Notice 54

On 4 December, the FSA made changes to the Handbook in eight instruments which:

- clarify the FSA policy to ensure that all firms that undertake designated investment business are categorised correctly (FSA 2008/65);
- improve the day-to-day application of the insurance prudential sourcebooks including the reporting of derivatives and assets backing index-linked liabilities (FSA 2008/66);
- clarify the disclosure requirements relating to income withdrawals from existing personal pensions schemes (FSA 2008/67);
- make revisions to the enforcement provisions, and associated guide, following a review undertaken earlier this year (FSA 2008/68);
- remove the current limit of 28 days imposed on collective investment schemes which have suspended dealings in units (FSA 2008/69);
- clarify and update the Listing Rules relating to the sponsor regime (FSA 2008/70);
- provide for a delay in disclosure that should improve the effectiveness of any liquidity support provided, and reduce the likelihood of disclosure undermining confidence in the issuer (FSA 2008/71); and
- change Regulated Covered Bonds forms so that the RCB application and ongoing monitoring processes are made more efficient (FSA 2008/72).

Please click [here](#) for a copy of the Handbook Notice. (Source: *FSA Handbook Notice 54, 4 December 2008*) - [Back](#)

### FSA Proposes Changes To The Rules For Approved Persons

On 19 December 2008 the FSA published Consultation Paper, CP 08/25: 'The approved persons regime – significant influence function review' (**CP**).

The CP proposes amendments to the FSA handbook to extend the approved persons regime and sets out how



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the FSA is enhancing its scrutiny of senior management competence. The main purpose of the CP is to ensure that all directors and senior managers understand their regulatory obligations, have relevant experience and carry out their roles with integrity.

In summary, the CP proposes to

- extend the definition of the existing CF1 (director) and CF2 (non-executive director) controlled functions to include certain individuals in parent companies to which an authorised firm is accountable;
- clarify the role of non-executive directors to make clear that the FSA will, in future, look at non-executives more closely where it believes they should have intervened more actively with a firm's management;
- extend the definition of CF29 (significant management function) to include all proprietary traders where they can exert a significant influence over a firm;
- amend the application of the approved persons regime to UK branches of overseas firms based outside the EEA; and
- extend the rule obliging firms to provide references for applicants of the CF30 (customer function) to all controlled functions if requested to do so.

Please click [here](#) for a copy of the CP. (Source: FSA, [press release](#), FSA/PN/153/2008, 19 December 2008) - [Back](#)

## FSA Consultation Paper On Stress Testing

On 9 December 2008 the FSA published a consultation paper (CP 08/24) proposing changes to the Handbook rules and guidance on stress and scenario testing. The changes include:

The *Reverse-stress test requirement* would apply to banks, building societies, CRD investment firms and insurers, and would require firms to consider the scenarios most likely to cause their current business model to become unviable. The CP explains that the aim is to ensure that firms more fully explore 'tail risks' which, if they were to crystallise, would cause counterparties and investors to lose confidence in them, so that a firm is more aware of its business model vulnerabilities when making strategic business

decisions, when contingency planning, and when considering its risk management arrangements.

In relation to *Risk-based capital* the FSA proposes to make some drafting changes to its existing requirements on Pillar 2 capital stress and scenario testing (the ICAAP provisions), or where firms use internal models to assess their Pillar 1 capital requirements. These are intended to clarify the FSA's current policy and address recommendation of the internal audit report into its supervision of Northern Rock.

Please click [here](#) for a copy of the consultation paper. (Source: FSA, [Newsletter](#) to CP 08/24, 9 December 2008) - [Back](#)

## FSA Consultation On Financial Stability And Depositor Protection

On 8 December 2008 the FSA published Consultation Paper 08/23 on "Financial stability and depositor protection: FSA responsibilities". The paper outlines the FSA's policy position for some aspects of its responsibilities under the banking reform work, including triggers for the special resolution regime and information requirements, and supports the Banking Bill, which is currently going through Parliament.

Consultation on the proposals in this CP ends on 8 March 2009. The FSA will finalise any of the proposed changes in light of the consultation and publish final guidance as part of a Policy Statement covering Banking and Compensation Reform, which it announced to produce in the third quarter of 2009.

Feedback on the contractual barriers issue will also feed into the final rules and guidance on liquidity, expected in the second quarter of 2009.

Please click [here](#) for a copy of the consultation paper. (Source: [FSA Newsletter](#) to CP08/23, 8 December 2008) - [Back](#)

## FSA Publishes Policy Statement In Relation To DEPP, RCB And EG

In December 2008 the FSA published Policy Statement 08/13 "Decision Procedure and Penalties manual and Enforcement Guide Review 2008 Feedback on CP08/10"

In this Policy Statement the FSA responds to comments received in relation to Consultation Paper 08/10 (CP08/10): Decision Procedure and Penalties manual



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and Enforcement Guide Review 2008 and publishes amendments to the text of the Decision Procedure and Penalties manual (**DEPP**), the Regulated Covered Bonds sourcebook (**RCB**) and the Enforcement Guide (**EG**) and associated consequential changes.

Please click [here](#) for a copy of the Policy Statement. (Source: *FSA PS 08/13, December 2008*) - [Back](#)

## FSA Publishes Feedback On Listing Regime

Following its review of the structure of the Listing Regime, the FSA published a feedback statement proposing further clarity to the Listing Regime to enable issuers and investors to make informed decisions.

In particular, the paper sets out proposals on how the UK listing regime can be clearly marked out into 'Premium' and 'Standard' so market participants understand the differences in the obligations issuers have to meet.

The [Feedback Statement and Consultation Paper](#) can be found on the FSA website. The [proposed structure](#) of the listing regime can be found on the FSA website. The FSA's [Discussion Paper](#) 'A review of the Structure of the Listing Regime' published in January 2008 reviewed the structure of the UK listing regime.

(Source: *FSA [press release](#), FSA/PN/143/2008, 01 December 2008*) - [Back](#)

## FSA Consults On Liquidity Rules For Banks, Building Societies And Investment Firms

On 04 December 2008 the FSA published a consultation paper proposing a far-reaching overhaul of the liquidity requirements for banks, building societies and investment firms.

The FSA is proposing the following:

- a new, quantitative framework for liquidity risk management which places greater emphasis on firms' ability to assess liquidity risks and develop policies to tackle them;
- a strengthened qualitative framework for liquidity risk management, with an increased focus on firms' stress testing and contingency funding plans;
- new liquidity reporting requirements; and

- a new approach to firms operating in the UK which are part of a wider UK or international group.

The measures proposed in the CP are designed to enhance firms' liquidity risk management practices significantly and will, in some cases, reshape their business models over the coming years. They will also improve the FSA's ability to monitor and supervise firms' liquidity risk exposures.

As part of the CP the FSA is also pre-consulting on the reporting requirements for the new liquidity regime. The consultation period runs for a month and the FSA will then look to issue a separate reporting CP in Q1 2009.

The [Consultation paper 08/22: Strengthening liquidity standards](#) can be found on the FSA website. (Source: *FSA [press release](#), FSA/PN/144/2008, 04 December 2008*) - [Back](#)

## HM Treasury And The FSA Propose Legislative Framework For AFIB

On 10 December 2008 HM Treasury and the FSA published a joint consultation paper on the legislative framework for the regulation of alternative finance investment bonds (**AFIB**). As the document explains, AFIBs refer to a type of financial instrument commonly known as sukuk or Islamic bond, but can also refer to any financial instrument with similar characteristics. The authorities are seeking to introduce legislative changes to align the regulatory treatment of AFIBs with conventional debt securities. Four policy options have been identified:

- Option 1: introduce legislative amendments to create a new specified instrument under the RAO and explicitly to exempt these instruments from CIS regulations. Introduce a unique regulatory definition for this purpose.
- Option 2: same as option 1 but AFIBs will be defined by the existing tax definition;
- Option 3: same as option 1 but include AFIBs under the existing specified investment of creating or acknowledging indebtedness; and
- Option 4: is to do nothing.

Please click [here](#) for a full copy of the consultation paper. (Source: *HM Treasury, FSA, Consultation on the legislative framework for the regulation of alternative*



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*finance investment bonds (sukuk), 10 December 2008*  
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## HM Treasury Launches A Series Of Consultations

On 16 December 2008 HM Treasury launched the three following consultations:

*Investment Trust Companies: next steps* – This consultation contains detailed proposals to deliver a new tax regime to enable Investment Trust Companies to invest in interest bearing assets tax efficiently. These proposals follow the package of measures to improve asset management taxation which were announced in Budget 2008 and the discussion paper which was published in July 2008. The paper includes a summary of responses to the discussion paper and draft regulations on which comments are invited by Wednesday 11 February 2009. The documents are available at the HM Treasury website at:

- [Investment trust companies: next steps](#); and
- [Investment Trust Companies](#)

*Offshore funds: a discussion paper* - In October 2007, the Government published a discussion paper on the taxation of offshore funds. A summary of responses to that discussion paper and draft regulations were published earlier this year. The paper published sets out the Government's further proposals and includes draft legislation for a new definition of an offshore fund as well as updated draft regulations on the modernisation of the regime. The Government welcomes industry's view on this paper and the draft legislation by Wednesday 11 February 2009. The documents are available at the HM Treasury website at:

- [Offshore funds: further steps published 16 December 2008](#)
- [Offshore funds: a discussion paper \(PDF 402KB\)](#)
- [Offshore funds: the next steps published 27 March 2008 \(PDF 330KB\)](#)

*Trading and Investment for Authorised Investment Funds* - The 2008 Pre-Budget Report announced the Government's intention to discuss with the industry the potential for introducing legislation to provide increased certainty about whether transactions carried out by Authorised Investment Funds (AIFs) are trading or investment. This discussion paper sets out proposals for such legislative change, including the introduction of

a 'white list' of financial transactions, which when undertaken by AIFs meeting a genuine diversity of ownership test will not be taxed as trading, and also removing a 'precipice' in the current legislation whereby there is a risk that one trading transaction could bring the whole fund into tax as a financial trader. The document is available at the HM Treasury website at:

- [Trading and Investment for Authorised Investment Funds \(PDF 195KB\)](#)

(Source: HM Treasury, [website](#), Consultation & Legislation, 16 December 2008) - [Back](#)

## The Authorised Investment Funds (Tax) (Amendment No. 3) Regulations 2008 (SI 2008/3159)

In Force: 1 January 2009. These Regulations amend the Authorised Investment Fund (Tax) Regulations 2006 (S.I. 2006/964) ("the principal Regulations").

Please click [here](#) for a copy of the Regulations and the accompanying Explanatory Memorandum. - [Back](#)

## Counter-Terrorism Act 2008

On 1 December 2008, the Counter-Terrorism Act 2008 was published on the Office of Public Sector Information (OPSI) website.

The Act was passed on 26 November 2008. The Act includes provisions relating to terrorist financing and money laundering. These provisions came into force on 27 November 2008.

Please click [here](#) for a copy of the Act. - [Back](#)

## CESR To Consult On Non-equity Markets Transparency

On 19 December 2008 CESR published a consultation paper on the transparency of non-equity markets. The consultation seeks to gather views that will assist CESR in analysing the role of trade transparency on markets for corporate bonds, structured finance products and credit derivatives.

In relation to corporate bonds, the objective of CESR's work is to review whether CESR's conclusions on trade transparency in bond markets remain appropriate in light of the experiences from the recent market turmoil. Regarding structured finance products and credit derivatives, the key question CESR seeks to consider is the extent to which post-trade information plays a role to support price formation, reinforce valuation practices



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and provide supplementary information about the scale of credit risk transfers. The Consultation closes to responses on 19 February 2009.

This [consultation paper](#) is accompanied by a [press release](#). (Source: CESR, [website](#), 19 December 2008) - [Back](#)

## CESR Publishes Call For Evidence On The Regulation Of Short-selling By CESR Members

Following the CESR Plenary meeting on 30 September 2008 it was agreed that a dedicated task force on short-selling should be formed immediately. This decision was taken in the aftermath of the series of regulatory interventions in short-selling taken throughout Europe through the second and third weeks of September 2008.

The task force has reported to CESR and has been mandated to conduct work on the following: 1) Assess the impact of the measures that were introduced by CESR Members; 2) Consider the range of policy options for taking a more convergent approach; and 3) Enhance the coordination and cooperation between CESR Members on the decisions adopted at national level.

The Call for Evidence can be found on CESR's website. Please click [here](#). (Source: CESR, [press release](#), 19 December 2008) - [Back](#)

## Launch Of Public Consultation On Alternative Dispute Resolution

On the 10 December 2008 the European Commission launched a public consultation on alternative dispute resolution (**ADR**) in the area of financial services.

The document explains that ADR schemes, such as ombudsmen, mediators or complaint boards, responsible for resolving disputes between consumers and financial services providers, do not currently exist in all EU Member States and for all financial services sectors. In addition, existing schemes do not always cover all financial services providers.

This European Commission invites stakeholders to express their views on what steps they would consider necessary to improve the coverage and efficiency of FIN-NET, the network of national ADR schemes dealing with financial services disputes, created by the European Commission in 2001, to promote the creation of ADR schemes and to ensure that financial services

providers adhere to them. The document also raises the issue of whether financial services providers should be obliged to inform customers about the possibility to resolve disputes through an ADR scheme.

The Commission encourages wide participation of all interested stakeholders and invites them to respond to the consultation by 27 February 2009. Further information can be found: [http://ec.europa.eu/internal\\_market/fin-net/docs\\_en.htm](http://ec.europa.eu/internal_market/fin-net/docs_en.htm)

(Source: *European Union*, [rapid press release](#), 10 December 2008) - [Back](#)

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## Funds

### Independent Review Into British Offshore Financial Centres

On 02 December 2008, the UK Government announced that Michael Foot, currently Chairman of the UK office of Promontory Financial Group, will lead the independent review of British offshore financial centres announced at Pre-Budget Report 2008. The review will look at the immediate and long-term challenges facing British offshore financial centres in the current economic climate, including:

- financial supervision and transparency;
- taxation, in relation to financial stability, sustainability and future competitiveness;
- financial crisis management and resolution arrangements;
- international cooperation.

Please click [here](#) for a copy of the press release. (Source: *HM Treasury*, [press release](#), 13/08, 02 December 2008) - [Back](#)

### FSA Publishes two Factsheet For Distributor-influenced Funds

On 10 December 2008 the FSA published on its website two factsheets in relation to Distributor-influenced funds (**DIFs**).

The FSA defines DIFs as funds that are created for the clients of a particular distributor, typically an adviser firm. They could be designed on a bespoke basis for



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the distributor or they could be set up using an existing fund that is tailored for the distributor.

- [Factsheet distributor-influenced fund: Points for distributors to consider](#): this factsheet is for distributors with their own range of distributor-influenced funds or that are planning to introduce one. It explains what to consider when adopting and using distributor-influenced funds.
- [Distributor-influenced funds factsheet for ACDs, fund managers and providers](#): In this factsheet, distributor-influenced funds are distinct from the operations of fund managers, collective investment scheme operators and

private client investment managers for whom investment management is central to the business proposition. They are arranged by firms that have chosen to outsource to professionals as their preferred route, potentially without permission to manage investments or operate a fund.

(Source: FSA, *Factsheet DIFs*, 10 December 2008) - [Back](#)

If you wish to discuss any of the above, or for more information, please contact a member of the Financial Regulation Group



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