COMPLIANCE

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Chers Collègues,

Chers Membres,

On s'était bien gardé d'annoncer une année 2013 plus sereine que les précédentes, grand bien nous en a pris ! Elle a à peine débutée que les esprits se sont animés sur quelques sujets d'actualité: la réforme du Twin Peaks, celle de la loi de 1993 sur la lutte contre le blanchiment et le financement du terrorisme, en particulier au niveau de la fraude fiscale grave et organisée et l'avant-projet de loi modifiant le régime actuel de la régularisation fiscale.

La réforme du Twin Peaks a plus particulièrement un impact sur les assureurs et les intermédiaires en assurances. En effet, contrairement à ce que l'on a souvent lu, le Twin Peaks II n'est pas une anticipation de MiFID II mais plutôt une manière d'appliquer les règles de conduite de MiFID I au sens large ("suitability", "appropriateness", transparence des frais, connaissance des produits, conflits d'intérêts...) aux assurances-vie (branche 23 mais aussi sans doute branches 21 & 26). Il y a là une logique à laquelle on peut souscrire pour les produits comportant une composante investissement/épargne mais il est permis de se demander si en prenant les devants, notre Royaume ne risque pas de créer au moins temporairement une distorsion de "level playing field" au niveau européen. Il est vrai que nous ne serons pas les premiers à générer une telle distorsion, d'autres ayant été avant-gardistes dans d'autres domaines, comme celui des "inducements" notamment. On soulignera encore au sein de cette réforme une volonté de plus grande transparence et d'un meilleur encadrement de la publicité pour les comptes-épargne, la présomption de lien causal entre la faute et le dommage et non des moindres, l'extension des moyens de contrôle de la FSMA (mystery shopping, intervention au niveau des produits..) ainsi que le renforcement du régime des sanctions susceptibles d'être appliquées.

M. Lannoy (FSMA) évoquera certains points plus en détails pour nous lors du Compliance Day du 14 juin.

La réforme de la fraude fiscale grave (et non nécessairement organisée) a aussi suscité une grande émotion. Ce n'est pas tant cette modification qui a mis les cerveaux de Compliance en ébullition que l'éventuelle disparition de la liste exhaustive des infractions primaires de blanchiment sur base de laquelle les Compliance Officers effectuent aujourd'hui, s'ils ont des soupçons de blanchiment, des déclarations de soupçons à la CTIF. La ratio legis de la loi était tout de même de déclarer les infractions présentant un certain degré de gravité et non pas de se fonder sur le moindre soupçon d'une infraction de blanchiment; ce délit visant le produit de n'importe quelle infraction y compris la fraude fiscale simple. Cette modification revenait à supprimer toute distinction entre l'aspect préventif (auquel les établissements de crédit et les entreprises d'assurance sont appelées à coopérer) et l'aspect répressif (sans toutefois, qui plus est, modifier l'article 505 du Code pénal).

La liste limitative d'infractions primaires aux termes de la loi de 1993 n'a jamais été prévue pour que les banques qualifient les faits en droit mais elle sert néanmoins de référentiel utile pour effectuer le lien avec une telle infraction, le délit de blanchiment, même s'il peut

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être poursuivi de manière autonome, étant en relation avec lesdites infractions primaires.

La déclaration de soupçons reste un acte grave susceptible d'être préjudiciable au client et elle risquait d'être intempestive si elle devait se fonder exclusivement sur l'interprétation nuancée qu'il y aurait eu lieu de faire dans chaque cas de figure des différentes hypothèses reprises à l'article 505 précité qui, fruit d'un compromis, n'est nonobstant le respect dû au législateur, pas un modèle de clarté.

Le caractère suspect d'une transaction peut peut-être être évalué à la lumière de l'activité et du profil économique du client mais on rappellera aussi l'importance du caractère intentionnel de l'infraction de blanchiment, voire de son dol spécial qui est souvent moins évident à déterminer.

Pour que le moindre soupçon naisse, encore faut-il que les éléments matériel et moral de l'infraction soient présents. Or, en pratique ce sont le plus souvent des indices de l'infraction primaire sous-jacente qui interpellent en premier et facilitent l'appréhension du délit de blanchiment. Il nous semblait donc plus aisé de pouvoir continuer à nous appuyer sur une liste limitative d'infractions primaires.

Dans le cadre de cette réforme, il nous semblait d'autant plus important de modifier l'article 505 pour préciser dans quels cas les tiers bénéficieraient encore d'une exonération.

Mentionner que le lien entre les opérations suspectes et la criminalité sous-jacente incombait seulement à la CFI nous semblait être un raccourci dans la mesure ou au final c'est tout de même le Parquet qui, le cas échéant, est appelé à faire ou à confirmer ce lien et non une cellule administrative. Il était permis de se demander si les déclarations massives auxquelles ce cadre vague aurait inéluctablement donné lieu et qui aurait engorgé la CFI auraient permis de démontrer au GAFI l'effectivité du système. Si l'on entendait réformer en ce sens n'aurait-il point été plus judicieux, plus simple, plus efficace, plus harmonisé et plus objectif de prévoir un système de déclarations obligatoires dès lors que certains paramètres sont présents, comme c'est le cas aux Pays-Bas et en Espagne ? Bref, nous pensions avoir atteint l'objectif au moins partiellement: la liste limitative restait, la fraude fiscale simple n'en faisait pas partie même si pour être déclarée la fraude fiscale grave ne devait plus devoir être organisée, que le concept méritait encore d'être précisé et que l'escroquerie fiscale suisse ou luxembourgeoise aux contours très clairs n'avaient pas convaincu.

Tel un phœnix qui renaît de ses cendres, on voit soudain ressurgir ce souhait de voir les professionnels du secteur financier effectuer des déclarations au-delà de la situation actuelle prescrite par l'art. 28 de la loi de 1993 en proposant une extension de son champ d'application par le biais de l'avant-projet de loi modifiant le régime actuel de la régularisation fiscale. "Lorsque les organismes et personnes visées ont connaissance d'un fait ou d'une opération en relation avec l'introduction d'une procédure de régularisation fiscale ou d'une décision prise par les autorités compétentes en cette matière, ils en informent immédiatement la Cellule." Ceci n'est pas acceptable. A partir de quand aurait-on connaissance d'un tel fait ? Au moment où le client nous informe des modalités de la régularisation ? Au moment où un montant est effectivement rapatrié ? Quid si le client ne nous informe pas de ses démarches de régularisation ou s'il a déjà régularisé avant d'effectuer une opération de rapatriement ? A nouveau la fraude fiscale simple serait visée!

Dans ce numéro, j'attire enfin particulièrement votre attention sur la "guidance" de la FSA relative aux "incentives" qui peuvent induire le "mis-selling".

Bonne lecture!

Marie-France De Pover

Présidente

La fraude fiscale simple serait à nouveau visée

PROHIBITION OF INDUCEMENTS IN THE NETHERLANDS

The Netherlands Authority for the Financial Markets (AFM) published a letter it sent to banks and insurance companies on 29 November 2012. The letter sets out certain aspects in relation to the prohibition of inducements (provisieverbod) that will apply in relation to various financial products upon amendment of the Financial Markets Supervision Act and related lower rules as of 1 January 2013.

Amongst other things, the letter contains guidance on the following aspects:

- advice and distribution fees should be charged to the consumer directly;
- financial services providers will need to have a proper cost-price model which needs to be verified by an external auditor;
- product costs must be separated from costs for advising and distribution so that consumers can compare the various products that are offered to them;
- information disclosure must be performed in compliance with the new rules and in a standardised format as of July 2013, and in the interim period (from January to July) financial services providers should provide more elaborate information than currently on their website, e.g. on the services provided and costs charged to be transparent; and
- product discounts will still be allowed provided this is not based on variable components such as a minimum volume of products purchased or quality of the (advisory) service provided.

FIGHTING TAX EVASION: NEW EU RULES ENTERED INTO FORCE ON 1ST JANUARY

On 6th December 2012 the European Commission adopted a Regulation laying down detailed rules for implementing Council Directive 2011/16/EU (Commission Implementing Regulation 1156/2012).

It includes various provisions on the standard forms and means of communication that Member States will use when exchanging information.

The New EU rules which improve Member States' ability to assess and collect the taxes that they are due entered into force on 1 January 2013.

The Directive on Administrative Cooperation in the field of taxation lays the basis for stronger cooperation and greater information exchange between tax authorities in the EU.

One of the key aspects of the Directive is that it brings an end to bank secrecy: one Member State cannot refuse to give information to another just because it is held by a financial institution.

The Directive sets down practical and effective measures to improve administrative cooperation on tax matters.

Common forms and procedures for exchanging information are provided, which will make the transmission of data between national authorities quicker and more efficient.

Tax officials may be authorised to participate in administrative enquiries in another Member State. They will also be able to request that their tax documents and decisions are notified elsewhere in the EU.

The Directive has a wide scope, covering all taxes except those already covered under specific EU legislation (i.e. VAT and excise duties).

The new European rules will bring greater transparency, better information exchange and closer cooperation

SWITZERLAND WANTS TO PREVENT THE ACCEPTANCE OF UNTAXED ASSETS

The Swiss Federal Council is stepping up its efforts to combat abuses in the area of money laundering and taxation. With the planned implementation of the revised recommendations of the Financial Action Task Force (FATF), serious tax offences will be qualified as predicate offences for money laundering in future. In the event that they suspect money laundering, financial intermediaries should report these cases to the Money Laundering Reporting Office Switzerland.

The Federal Council also decided to regulate the principles of enhanced due diligence requirements to prevent the acceptance of untaxed assets. The extent of the examination depends on the risk posed by the contracting party, which is similar to the due diligence requirements for combating money laundering and terrorist financing. Financial intermediaries will be obliged to issue self-regulation provisions in compliance with specific legal parameters which are to be recognised and monitored by the supervisory authority. Recognised self-regulation provisions are equivalent to legal provisions in terms of their impact. In the absence of any self-regulation, the supervisory authority will be empowered to issue corresponding regulations.

Within the scope of the due diligence requirements to prevent the acceptance of untaxed assets, it is envisaged that the financial intermediary will be able to request a self-declaration from clients on the fulfilment of their tax obligations. The self-declaration will serve as an indicator of the tax-compliant conduct of the client.

Confidence and trust are critical to financial markets

THE UK FINANCIAL SERVICES AUTHORITY CONSULTS ON NEW REGULATIONS FOR FINANCIAL BENCHMARKS

Benchmarks are used across financial markets in a broad range of activities. They have historically been set by the financial markets themselves, and existed outside of any regulatory regime. In the case of LIBOR, this industry-led approach has failed.

On 2 July 2012 the Chancellor of the Exchequer commissioned Martin Wheatley, managing director of the FSA, to undertake a review of the structure and governance of LIBOR and the corresponding criminal sanctions regime.

On 28 September 2012 'The Wheatley Review of LIBOR' was published, which included a 10-point plan for comprehensive reform of LIBOR. One of its key recommendations was that while the setting of LIBOR should remain an industry-led activity; the submission to, and administration of, the rate should be regulated by the FCA.

On 17 October 2012 the British government accepted the Review's recommendations in full, and amended the upcoming Financial Services Bill accordingly.

The FSA has considered both the Wheatley Review recommendations and the Treasury's proposed legislative amendments in designing an approach to regulating the setting of benchmarks. At least initially, the only 'regulated benchmark' in the UK will be LIBOR. However, the new regime provides a framework for regulation that can be extended to cover additional benchmarks in the future, were the government to consider it appropriate to do so.

The proposals include:

- benchmark administrators will be required to corroborate submissions and monitor for any suspicious activity;
- those submitting data to benchmarks will be required to have in place a clear conflicts of interest policy and appropriate systems and

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THE UK FINANCIAL SERVICES AUTHORITY CONSULTS ON REGULATIONS FOR FINANCIAL BENCHMARKS (PART II)

controls. This will result in clear, robust rules which will give firms and their employees comfort that the regulatory regime clarifies what is expected of them;

• two new significant influence controlled functions created under the FSA's Approved Persons Regime for the administrator and submitting firms.

The FSA also seeks comments on ensuring the continuity of LIBOR and broadening participation in the rate.

The Wheatley Review concluded that global markets benefit from the continuing participation of major firms in the LIBOR panels and that market integrity could be undermined if submitting firms were to leave them.

In addition the Review noted that larger panel sizes would benefit the accuracy and reliability of the benchmark.

As a consequence, the FSA has asked for feedback on how best to broaden the participation in LIBOR panels, including the use of the FCA's powers to require firms to contribute to the rate on a permanent basis which the government is proposing to grant. As set out in the Consultation Paper, it would be beneficial to the quality of the LIBOR benchmark, and therefore wider market integrity, if firms were to review their LIBOR participation against the FCA's suggested criteria and approach the administrator with a view to submitting to LIBOR Panels if they concluded that this was appropriate.

WORK PROGRAMME OF THE JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

In 2013, the Joint Committee will give high priority to the areas of consumer protection and risk analysis. The Joint Committee will also pursue the regulatory work initiated in 2012 in key areas such as Financial Conglomerates, Anti Money Laundering and Credit Ratings, and will give more visibility to its work to external stakeholders.

Consumer Protection

The ESAs will ensure that Consumer Protection is given high priority in 2013 and will organise for the first time a joint Consumer Strategy Day. The work on Consumer Protection will focus on 3 work streams:

• Consumer protection sub-group: Cross-selling and complaints handling are a first priority.

The sub-group is in particular assessing whether principles developed for complaints handling in the insurance sector can be adapted to the securities and banking sectors.

• Product oversight and governance sub-group: This sub-group will consider the development of a set of high-level principles for the product approval process based on the results of its September 2012 mapping exercise. The intention is for the sub-group to consider the strengthening of controls before product launch (i.e. focussing on the product development process).

• Retail products sub-group (PRIPs): This sub-group will contribute to the development of proposals for the European Commission concerning delegated acts and to the development of draft Regulatory Technical Standards (RTS) in the area of disclosures for packaged retail investor products outlined in the legislative proposal.

Risk Assessment

The Risk SubCommittee will continue to develop suitable indicators for cross-sectoral financial risks, and to enhance its analytical approach. In particular, the ESAs are working towards closer cooperation on evaluating financial market developments of mutual concern, such as shadow banking, bank funding, credit derivatives, asset encumbrance, financial innovation, and financial market integration.

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The Joint Committee will give high priority to the areas of consumer protection and risk analysis

WORK PROGRAMME OF THE JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES (PART II)

To promote a more coordinated approach, the Risk Sub-Committee shall explore developing a pilot cross-sectoral risk database.

Regulatory work

- Financial Conglomerates: the ESAs stand ready to further contribute to the EC's fundamental review of the Financial Conglomerates Directive. The ESAs may start working on developing joint draft Technical Standards on risk concentrations, and intra group transactions and on the criteria for the determination of 'relevant competent authorities'.
- Anti Money Laundering (AML): the ESAs will continue their work in respect to equivalent/non-equivalent countries; they will also continue their work in relation to the 2nd E-Money Working Group with a view to adapt the AML/Payment Services Directive (PSD, 2007/64/EC) Cooperation Protocol on Payment Institutions to E-Money issuers.

Supervisory Practice

The ESAs will work together on the joint ESAs' cross sectoral Training Programme. The Joint Committee's Sub-Committee on AML will also pursue the assessment of AML supervisory practices and risk based approaches, with a view to promote common supervisory approaches and practice.

Common Processes and Procedures

The ESAs will pursue their contribution to the European System of Financial Supervision's assessment by the Commission, delivering further information on the ESAs' achievements and key indicators in 2013. In addition, views will be exchanged on possible improvements of the ESA's framework. Where applicable, the Joint Committee will contribute to any further development by the joint EBA-ESMA working group on principles and guidelines on benchmarks and market indices initiated in 2012 Q3 in the context of EURIBOR.

The lists of approved compliance officers have been published

THE FSMA PUBLISHES A NEW CIRCULAR ON THE COMPLIANCE FUNCTION

The Financial Services and Markets Authority (FSMA) publishes a new circular (Dutch - French) on the compliance function on its website. This is a joint circular by the FSMA and the National Bank of Belgium (NBB).

Both the FSMA and the NBB are responsible for supervising that the appropriate compliance function is present within Belgian financial institutions.

With respect to the FSMA, an approval for compliance officers has been introduced in order to supervise compliance by financial institutions with the rules of conduct.

Both supervisory authorities have drawn up a joint circular describing the principles that this compliance function must satisfy. In particular, a number of principles have been developed concerning the place of the compliance function within these institutions, the organization thereof, and its specific tasks. The overriding principle is that this function must be independent and be able to report to the institution's senior management and management boards.

For the FSMA, the compliance function is central to the supervision of compliance with the rules of conduct for the protection of the financial consumer. In the course of 2012, it has therefore subjected the heads of compliance to an approval whereby their specific knowledge and experience of these rules of conduct was assessed. The lists of approved compliance officers have been published on the website.

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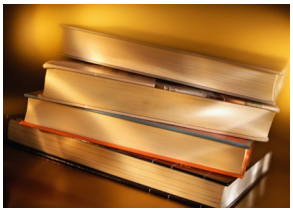
THE FSMA IMPLEMENTS THE ESMA ORIENTATIONS ON THE COMPLIANCE FUNCTION AND ON THE SUITABILITY TEST



The FSMA also implements the guidelines of the European Securities and Markets Authority (ESMA) on the compliance function on the one hand, and on the suitability test on the other hand.

The guidelines on the compliance function confirm the central role that this function plays in supervising compliance with the rules of conduct.

The guidelines on the suitability test cover various aspects of the current obligation of financial institutions to collect the required information from clients when offering portfolio management services or investment advice, so as to enable these financial institutions to recommend investment services and financial instruments or to provide portfolio management services that are suitable for these clients. The aim of this mandatory suitability test is the protection of the financial consumer.

The guidelines are a European legal instrument which ESMA can use to address the competent authorities or financial market participants with a view to introducing consistent, efficient, and effective supervisory practices within the European System of Financial Supervisors (ESFS) and ensuring common, uniform and consistent application of European Union law.

THE FSMA IMPLEMENTS THE RECOMMENTATIONS OF THE ESRB ON LENDING IN FOREIGN CURRENCIES

The European Systemic Risk Board (ESRB) has issued recommendations on the subject of granting loans in foreign currencies to consumers.

The FSMA has published a document that details the content of these recommendations.

The ESRB is the institution responsible for the macro-prudential oversight of the financial system within the European Union.

The FSMA and the NBB are the Belgium members of the ESRB, chaired by the president of the European Central Bank. Its main objective is the prevention or mitigation of systemic risks that could have an adverse effect on financial stability within the European Union. To this end, part of the ESRB's role is to issue recommendations that describe the remedial action to be taken in response to the risks identified.

The ESRB has detected an increase in loans granted in foreign currencies in a number of Member States of the European Union. The ESRB considers that this increase in foreign currency lending could represent a significant systemic risk for those Member States and has therefore issued several recommendations on the subject.

Recommendation A, which falls within the competences of the FSMA, provides that registered companies that grant loans in foreign currencies must inform their clients of the risks stemming from developments in the foreign exchange and interest rates.

Registered companies are also encouraged to offer customers domestic currency loans, as well as financial instruments to hedge against foreign exchange risk.

The FSMA is of the opinion that these recommendations provide useful clarifications concerning the information requirements incumbent on registered companies when granting loans.

Where such an activity in foreign currencies is undertaken by a mortgage company, the FSMA will take into account these recommendations when carrying out its supervisory tasks.

The increase in foreign currency lending could represent a significant systemic risk

FSA PUBLISHES GUIDANCE TO HELP FIRMS AVOID POORLY MANAGED INCENTIVE SCHEMES THAT DRIVE MIS-SELLING

The Financial Services Authority (FSA) has published final guidance that will help financial firms avoid creating and operating incentives schemes that drive mis-selling.

In September 2012 the FSA published a review of sales incentives and asked for feedback on proposed guidance. At the same time Martin Wheatley, managing director of the FSA and CEO-designate of the Financial Conduct Authority (FCA), addressed an audience of senior bankers and insurers to ask them to end reward schemes that encouraged bad sales.

The guidance remains largely unchanged but the FSA has clarified the wording in some areas and provided further examples of good and bad practice. The guidance applies to all firms that deal with consumers and have sales staff or advisers who are part of an incentive scheme.

Many responses raised the issue of how firms use performance management and target setting; some saw this as more likely to increase mis-selling than financial incentives.

The guidance makes it clear that firms need to manage these risks as well, and the FSA is considering what additional work it will undertake in this area.

The FSA is planning to widen its review of sales incentives and will review how firms are acting on its guidance. The FSA will be assessing high street banks and other firms in addition to the 22 firms that were originally assessed.

The review published in September 2012, which encompassed banks, building societies, insurers, and investment firms, uncovered a range of serious failings, such as:

- most incentive schemes were likely to drive people to mis-sell and these risks were not being properly managed;
- firms failing to identify how incentive schemes might encourage staff to mis-sell, suggesting they had not properly thought about the risks or simply turned a blind eye to them;
- firms failing to understand their own incentive schemes because they were so complex, therefore making it harder to control them;
- firms relying too much on routine monitoring of staff rather than taking account of the specific features of their incentive schemes;
- sales managers with clear conflicts of interests, such as a responsibility to manage the conduct of sales staff whilst themselves able to earn a bonus if their team made more sales; and
- firms not doing enough to control the risk of mis-selling in face to face situations.

So serious were the failings at one firm that it was referred to the FSA's enforcement division.

Most incentive schemes drive people to mis-sell and this risks is not properly managed

INVESTMENT BANKER SENTENCED TO 2 YEARS AND 8 MONTHS IMPRISONMENT FOR INSIDER DEALING

Thomas Ammann was an investment banker working at Mizuho International plc (MIP). In late 2008 and 2009 MIP was advising Canon, the multi-national technology company, on its acquisition of Océ, a medium sized Dutch company making photocopiers, scanners, related software and accessories. By virtue of his employment at MIP, Ammann had access to inside price sensitive information relating to the takeover. Rather than dealing in his own name, Ammann encouraged two women to buy shares of Océ prior to the acquisition being announced. Following the announcement of the acquisition the women sold their shares for a profit, which they then shared with Ammann who made several hundred thousand pounds as a result of his offending. The FSA makes no criticism of Mizuho International plc.

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THE FSA HAS FINED A MORTGAGE LENDER £1.225 MILLION FOR FAILING TO TREAT CUSTOMERS FAIRLY

The CEO of Cheshire Mortgage Corporation Limited (CMCL), Henry Moser, has been fined £70,000 and agreed to step down from his role within three to six months. Andrew Lawton, the firm's compliance director, has been fined £13,500 and banned from holding a significant influential function.

The FSA also required CMCL to carry out a redress in order to pay approximately £2 million to around 2,000 affected customers.

CMCL operated in niche markets, including lending to customers with poor credit histories. The FSA found that CMCL failed to treat some of its customers fairly when they fell into arrears, was unable to always demonstrate that mortgages it sold were affordable, and did not always communicate regularly or fully with its customers. Moser has been disciplined for failing to spot these problems and put them right.

CMCL overcharged some customers in arrears and applied arrears charges inconsistently and unfairly. Customers were also sometimes notified of charges after they had been incurred.

The FSA also found that:

- when CMCL transferred customers in arrears to Monarch Recoveries for debt recovery, they were charged £150 despite it being an in-house company;
- CMCL did not always make a reasonable effort to reach an agreement with customers in arrears over method of payment; and
- CMCL did not always properly assess the affordability of mortgages by, for example, challenging a customer's declared income.

Moser, as CEO, was ultimately responsible for the actions and compliance of the firm, however he failed to ensure the firm was being properly managed so that problems would be identified and remedied. Lawton was aware of certain poor practices taking place at the firm but failed to put them right and demonstrated a lack of competence and capability in his role as a compliance director.

CMCL and Moser both settled at an early stage of the investigation so qualified for a 30% discount, without which the fines would have been £1.75 million and £100,000 respectively. Lawton settled at a later stage of the investigation and qualified for a 10% discount.

The failings were serious and let down a vulnerable group of consumers

THE EBA RECOMMENDS MAJOR EU CROSS-BORDER BANKING GROUPS TO DEVELOP RECOVERY PLANS

The EBA adopted on January 23, 2013 a formal Recommendation to ensure that major EU cross-border banks develop group recovery plans by the end of 2013. The plans shall be submitted to the respective competent authorities and discussed within colleges of supervisors. The aim of the Recommendation is to spur the development of recovery plans and to foster convergence on the highest standards across the Union.

The Recommendatio intends to fill the interim period before a comprehensive legislative framework for the recovery and resolution of credit institutions is implemented at EU level following the proposal by the European Commission presented in June 2012.

Group recovery plans should be drafted in accordance with the international standards agreed under the auspices of the Financial Stability Board and consistently with the template attached to the Recommendation. The template covers the key elements that should be addressed in a recovery plan:

- general but comprehensive information on the institution and its governance structure;
- the list and description of options available in a crisis

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THE EBA RECOMMENDS MAJOR EU CROSS-BORDER BANKING GROUPS TO DEVELOP RECOVERY PLANS (PART II)

situation and an assessment of their execution and impact;

• the measures that the institution plans to implement to facilitate, in the future, the update of the recovery plan or its implementation in crisis times.

The template for the recovery plans follows an EBA discussion paper published in May 2012. It is in line with the Key Attributes of Effective Resolution Regimes for Financial Institutions issued by the Financial Stability Board in October 2011.

The EBA Recommendation is addressed to the national competent authorities which are home supervisors for the 39 European banks listed in the annex. Those national competent authorities shall notify the EBA by 23 March 2013 as to whether they comply or intend to comply with this Recommendation.

ESMA AND THE EBA TAKE ACTION TO STRENGTHEN EURIBOR AND BENCHMARK RATE-SETTING PROCESSES

The European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) have published on January 11, 2013 the results of their joint work on Euribor and propose principles for benchmark rate-setting processes. The publications include:

• A review of Euribor's administration and management and clear recommendations to the Euribor-European Banking Federation (EEBF) to improve the governance and transparency of the rate -setting process;

• Formal EBA Recommendations to national authorities on the supervisory oversight of banks participating in the Euribor panel; and

• A joint ESMA-EBA consultation on Principles for Benchmark Setting Processes in the EU which establish a framework for the conduct of benchmark rate-setting and the activities of participants in the process.

Steven Maijoor, ESMA Chair, said:

"The proposed Principles, which are aligned with ongoing EU and international work, will give clarity to benchmark providers and users, and are an immediate step to be taken in advance of potential wider changes in the supervisory and regulatory framework for financial benchmarks."

The definition of Euribor is not sufficiently clear as it is based on terms which create ambiguity

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