

## Regulatory Update December 2009

### UK

The Alternative Investment Management Association (AIMA) – the global hedge fund industry association – has reiterated its support for the registration of hedge fund managers in the U.S. and for the reporting of systemically relevant information by larger managers to national authorities in the interests of financial stability. The move comes as the bill (sponsored by Rep. Paul Kanjorski) that will require hedge fund managers operating in the U.S. to register with and be supervised by the Securities and Exchange Commission (SEC) won bi-partisan support from the House Financial Services Committee. The Private Fund Investment Advisers Registration Act 2009 will make the registration of hedge fund managers in the U.S. mandatory for the first time. [http://www.aima.org/en/media\\_centre/press-releases.cfm/id/40F01E5D-3F04-4184-9B4E087C8FF502CD](http://www.aima.org/en/media_centre/press-releases.cfm/id/40F01E5D-3F04-4184-9B4E087C8FF502CD)

A study released by the CFA Institute Centre for Financial Market Integrity, the policy arm of CFA Institute, has found no empirical evidence to suggest market fragmentation has had any material impact on the quality of the price formation process for equities traded under the Markets in Financial Instruments Directive (MiFID) regime. The study was undertaken to establish whether the proliferation of new trading platforms under MiFID has affected transparency, costs and price formation to the detriment of investors. [http://www.cfainstitute.org/aboutus/press/release/09releases/20091207.html?intCamp=default\\_sidebar\\_market\\_fragmentation\\_study](http://www.cfainstitute.org/aboutus/press/release/09releases/20091207.html?intCamp=default_sidebar_market_fragmentation_study)

The Takeover Panel Code Committee believes that it is no longer appropriate for Rule 5 to restrict an offeror from acquiring interests in shares and, consequently, restrict other persons from disposing of interests in shares to the offeror beyond the first closing date of an offer, notwithstanding that uncertainty as to whether there will be a phase II investigation may persist beyond that date. In addition, the Code Committee understands that there are difficulties in establishing with certainty that an offer falls outside the jurisdiction of the UK competition authorities, such that that particular limb of the exception in Rule 5.2(c)(iii) is, in effect, redundant. <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/CP33.pdf>

The FRC has today launched a consultation on its proposals to reform the UK's Corporate Governance Code (formerly the Combined Code). The Code has been revised regularly to ensure it reflects changing governance concerns and practices and economic circumstances. The latest proposals take into account those lessons of the recent financial crisis that are relevant to all companies.

<http://www.frc.org.uk/press/pub2175.html>

The Accounting Standards Board (ASB) has issued 'Rising to the challenge', the report of its review of the narrative reporting of 50 UK listed companies in 2008 and 2009 <http://www.frc.org.uk/asb/press/pub2148.html>

UK Government to implement Walker reforms on pay and governance. The Government will move quickly to implement the reforms of bank pay and governance proposed today by Sir David Walker. Sir David's review was commissioned by the Government earlier this year to explore failures of corporate governance and management of banks. His final report suggests a series of reforms to strengthen the role of shareholders, improve the quality of bank boards, and to increase transparency of pay and bonus policies.

[http://www.hm-treasury.gov.uk/press\\_113\\_09.htm](http://www.hm-treasury.gov.uk/press_113_09.htm)

International mergers and acquisitions are forecast to decline by 56% in 2009 compared with 2008, the largest year-on-year decline since 1995 (see figure 1). This estimate is based on OECD analysis of data for international M&A activity up to 26 November 2009. The full report is available [here](#).

[http://www.oecd.org/document/58/0,3343,en\\_2649\\_34529562\\_44220858\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/58/0,3343,en_2649_34529562_44220858_1_1_1_1,00.html)

The Global Reporting Initiative and IFC issue guidance for enhanced corporate reporting on gender issues, and advise investors to encourage gender diversity. Despite the presence of gender-related indicators in the sustainability reporting guidelines issued by the Global Reporting Initiative (GRI), few companies report sufficiently on gender-related issues, according to a new guide

[http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/web\\_GenderReporting\\_EmbeddingGender\\_ExecSummary/\\$FILE/GRI-IFC\\_EmbeddingGender\\_LR.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/web_GenderReporting_EmbeddingGender_ExecSummary/$FILE/GRI-IFC_EmbeddingGender_LR.pdf)

## Europe

The study report commissioned by the European Commission on corporate governance monitoring and enforcement practices within the Member States has been published. The study was commissioned to describe within each Member State: the relationship between legislation and codes; the existing monitoring and enforcement mechanisms for codes and their effectiveness; companies' perceptions of the codes; the quality of companies' disclosure regarding governance principles and 'comply or explain'.

[http://ec.europa.eu/internal\\_market/company/docs/ecgforum/studies/comply-or-explain-090923\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/ecgforum/studies/comply-or-explain-090923_en.pdf)

Taylor Rafferty European Debt IR Benchmarking Study Reveals Significant Upgrade in Debt-Related Investor Communications. <http://www.taylor-rafferty.com/News/Archive/2009/Taylor-Rafferty-European-Debt-IR-Benchmarking-Study-Reveals-Significant-Upgrade-in-Debt-Related-Investor-Communications/>

**Italy reconsiders short selling regime.**

<http://www.consob.it/mainen/index.html?mode=gfx>

## North America

Overcoming short-termism: a call for a more responsible approach to investment and business management

<http://blogs.law.harvard.edu/corpgov/2009/09/11/overcoming-short-termism-a-call-for-a-more-responsible-approach-to-investment-and-business-management/>

The Canadian Securities Administrators today published CSA Staff Notice 58-305 Status Report on the Proposed Changes to the Corporate Governance Regime, which outlines its conclusion that now is not an appropriate time to introduce significant changes to Canada's corporate governance regime.

<http://www.securities-administrators.ca/aboutcsa.aspx?id=864>

NYSE said has joined with Barclays Capital, Getco, Goldman Sachs Group Inc. (GS), Knight Capital Group Inc. (NITE) and UBS AG (UBS). Additional operators of alternative trading systems are in talks to join up, according to NYSE Euronext.

<http://online.wsj.com/article/BT-CO-20091020-712449.html>

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Policy updates to RiskMetrics Group's ("RMG") U.S. benchmark guidelines for 2010. If new issues arise, such as shareholder proposals or regulatory developments, prior to the next formal update, RMG will adopt policies to cover such issues on an as-needed basis.

<http://www.riskmetrics.com/sites/default/files/RMG2010USPolicyUpdates.pdf>

Deputy Director Shelley Parratt delivered this important keynote speech regarding what the SEC Staff expects from 2010 executive compensation disclosures. <http://www.sec.gov/news/speech/2009/spch110909sp.htm>

The first enforcement action brought by the SEC pursuant to Regulation G, which requires companies to reconcile the non-GAAP financial measure to the most directly comparable GAAP financial measure.

<http://www.sec.gov/litigation/litreleases/2009/lr21290.htm>

## ASIA

The Australian Treasury has issued a consultation on reforming the Australian corporate reporting regulations, by reducing unnecessary red tape and regulatory burden on companies and implementing a number of other important refinements to the regulatory framework.

<http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1677>

Singapore Exchange Ltd ("SGX") invites public comments and feedback on proposed new measures to strengthen the practices of corporate governance, and rule amendments to foster greater disclosure. The proposals stem from SGX's annual rule reviews that are undertaken to keep abreast of the challenges and developments of the

industry. [http://www.sgx.com/wps/wcm/connect/cp\\_en/site/press\\_room/new\\_s\\_releases/sgx+issues+consultation+paper+on+proposed+new+measures+and+rule+amendments+to+strengthen+corporate+governance+practice?presentationtemplate=design\\_lib/PT\\_Printer\\_Friendly](http://www.sgx.com/wps/wcm/connect/cp_en/site/press_room/new_s_releases/sgx+issues+consultation+paper+on+proposed+new+measures+and+rule+amendments+to+strengthen+corporate+governance+practice?presentationtemplate=design_lib/PT_Printer_Friendly)

Following the release of the consultation paper on *Reforms to the Supervision of Australia's Financial Markets* by Treasury, ASIC today announced arrangements for managing the transfer of front line market supervision from the Australian Securities Exchange (ASX) to ASIC. ASIC has formed a cross functional management team to develop proposals for assuming its new market supervision responsibilities, including market surveillance and participant supervision as well as to consider emerging markets trends, such as market structure innovation and competition. The team will be led by Mr Greg Yanco, Senior Executive Leader, Market Supervision Project, reporting to the Commission. <http://www.asic.gov.au/asic/asic.nsf/byheadline/09-241AD++ASIC+prepares+for+the+transfer+of+market+supervision?openDocument>