# MiFID2/MiFIR What you need to know now Seminar February 2014

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Third country firms Conduct of business Commodities Regulatory powers

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# Agenda

The European Parliament and the Council of Ministers of the EU recently came to political agreement on the reforms to the EU Markets in Financial Instruments Directive (MiFID2/MiFIR).

MiFID2/MiFIR are significant pieces of legislation necessary to complete the post-crisis regulatory puzzle, focusing on lighting opaque markets, ensuring orderly trading and further enhancing investor protection.

This seminar brings together two panels of Clifford Chance experts to discuss what you need to know now about the legislation, including the timing, next steps and likely business impact of the changes, in order to help firms develop their implementation plans.

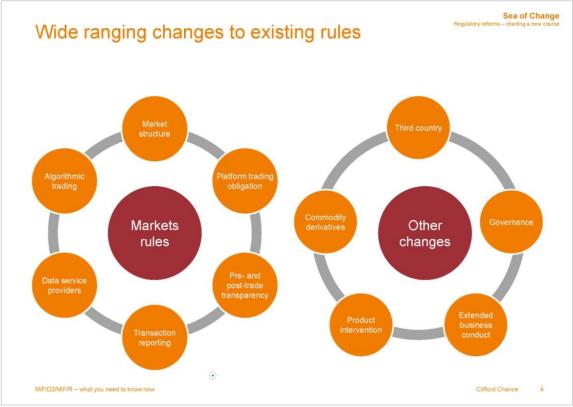
Time:

8:00am	Registration & coffee
8:30am	Introduction
8:50am	<ul> <li>Panel 1: Markets</li> <li>Market structure</li> <li>Equity markets transparency</li> <li>Fixed income and derivatives markets transparency</li> <li>Derivatives execution and high frequency trading</li> </ul>
9:35am	<ul> <li>Panel 2: Firm regulation</li> <li>Third country firms</li> <li>Conduct of business</li> <li>Commodities</li> <li>Regulatory powers</li> </ul>
10:20am	Closing Remarks
10:30am	Seminar ends

# Introduction

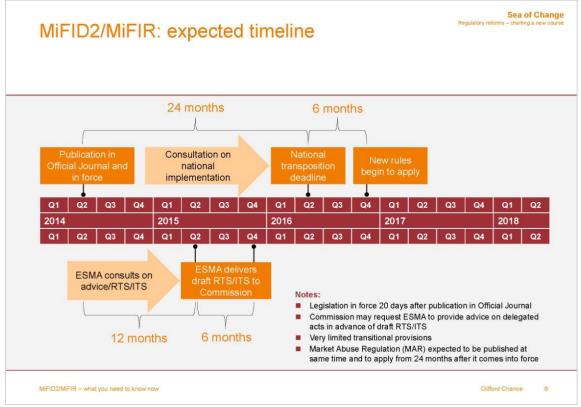
### Speakers' Materials Introduction – Chris Bates



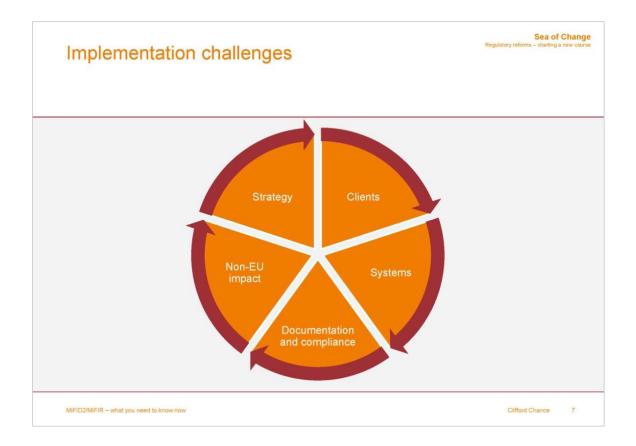


### Speakers' Materials Introduction – Chris Bates



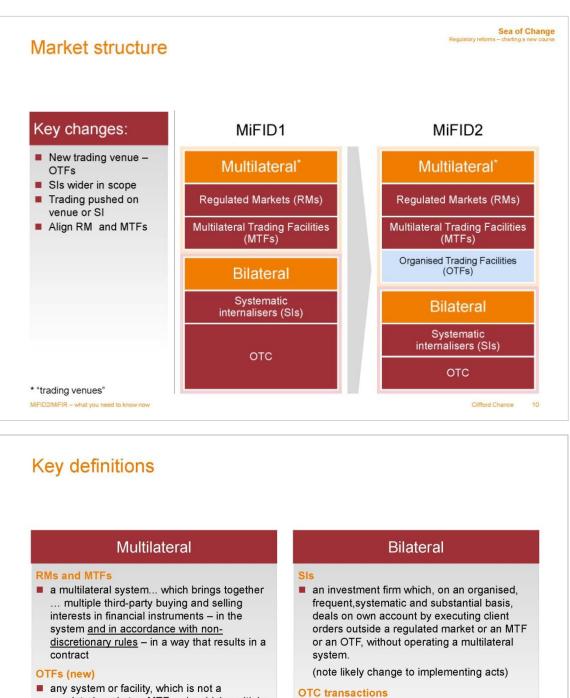


### Speakers' Materials Introduction – Chris Bates



# Panel 1: Markets

### Speakers' Materials Market structure – Monica Sah



regulated market or MTF, ... in which multiple third-party buying and selling interests in financial instruments are able to interact in the system in a way that results in a contract

#### **Multilateral system**

 any system or facility in which multiple third parties buying and selling trading interests in financial instruments are able to interact

Presentation title

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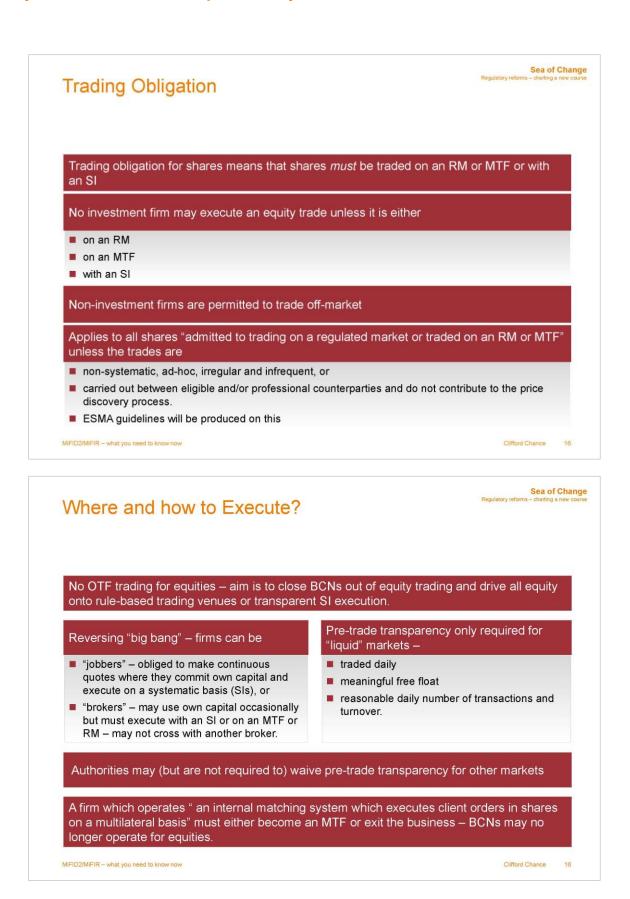
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### Speakers' Materials Market structure – Monica Sah

			F	Sea of Cha Regulatory reforms – charting a new of
ucture und		2		
RMs	MTFs	OTFs <sup>1</sup>	SIs	OTC
Exchange	Exchange or Firm	Exchange or Firm	Firm	Firm
Yes	Yes	No	Where quotes binding	No
No	No	Yes	Yes	Yes
No	No	No	Yes	Yes
Transparent, non- discriminatory rules, objective criteria	Transparent, non- discriminatory rules, objective criteria	Transparent, non- discriminatory rules, objective criteria	Commercial policy (in objective, non- discriminatory way)	Commercial policy
Clear, transparent rules (+ other criteria)	Transparent rules (+ adequate PAI <sup>2</sup> )	Transparent rules (+ adequate PAI <sup>2</sup> )	N/A	N/A
Yes	Yes	Yes	No	No
Yes	Yes	Yes	No	No
	RMs Exchange Yes No No Transparent, non- discriminatory rules, objective criteria Clear, transparent rules (+ other criteria) Yes	RMsMTFsExchangeExchange or FirmYesYesNoNoNoNoNoNoTransparent, non- discriminatory rules, objective criteriaTransparent, non- discriminatory rules, objective criteriaClear, transparent rules (+ other criteria)Transparent rules (+ adequate PAI2)YesYes	ExchangeExchange or FirmExchange or FirmYesYesNoNoNoYesNoNoYesNoNoNoTransparent, non- discriminatory rules, objective criteriaTransparent, non- discriminatory rules, objective criteriaTransparent, non- discriminatory rules, objective criteriaClear, transparent rules (+ other criteria)Transparent rules (+ adequate PAI2)Transparent rules (+ adequate PAI2)YesYesYesYes	RMsMTFsOTFs1SisExchangeExchange or FirmExchange or FirmFirmYesYesNoWhere quotes bindingNoNoYesYesNoNoYesYesTransparent, non- discriminatory rules, objective criteriaTransparent, non- discriminatory rules, objective criteriaTransparent, non- discriminatory rules, objective criteriaCommercial policy discriminatory rules, objective criteriaYesYesYesYesYesNoYesYesNoYesYesN/A

Market structure under MiFID2 (continued)					Sea of Ch Regulatory reforms – charting a new	
	RMs	MTFs	OTFs <sup>1</sup>	SIs	отс	
Pre-trade transparency	Yes <u>(incl. non-</u> <u>equities</u> )	Yes <u>(incl. non-</u> equities)	Yes	Yes <u>(incl. non-</u> equities)	No	
Pre-trade waiver available	Yes <u>(incl. non-</u> <u>equities</u> )	Yes <u>(incl. non-</u> equities)	Yes	No	N/a	
Post trade transparency	Yes <u>(incl. non-</u> <u>equities</u> )	Yes <u>(incl. non-</u> equities)	Yes	Yes <u>(incl. non-</u> equities)	Yes <u>(incl. non-</u> equities)	
Publish execut'n quality data	Yes	Yes	Yes	Yes	No	
Eligible OTC derivs platform	Yes	Yes	Yes	No	No	
Authorities can suspend trading	Yes	Yes	Yes	Yes	Yes	
Record orders	Yes	Yes	Yes	No	No	
<ol> <li>Non-equities only MIFID2/MIFIR – what you need</li> </ol>					Clifford Chance	

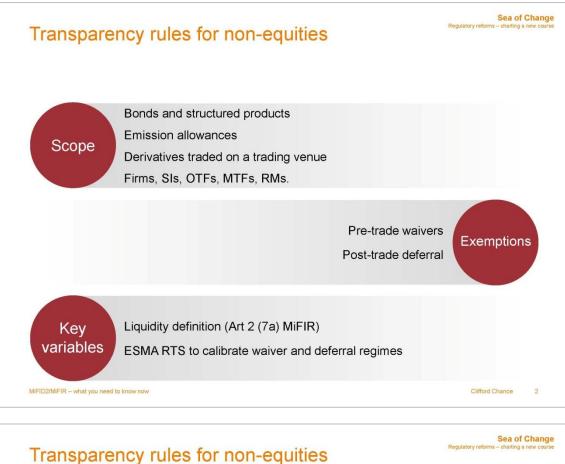
Equity markets transparency – Simon Gleeson



Equity markets transparency – Simon Gleeson



# Fixed income and derivatives markets transparency – Sean Kerr



# (Trading Venues pre-trade) Articles 7 and 8 of MiFIR

Obligations	(Art. 7)
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- All RMs, MTFs, OTFs to publish bid/offer and depth of trading interest
- Applies to actionable indications of interest
- Continuous basis during normal trading hours
- Give access to publication arrangements on reasonable commercial terms and nondiscriminatory basis to firms subject to Art. 17

#### Waivers (Art. 8)

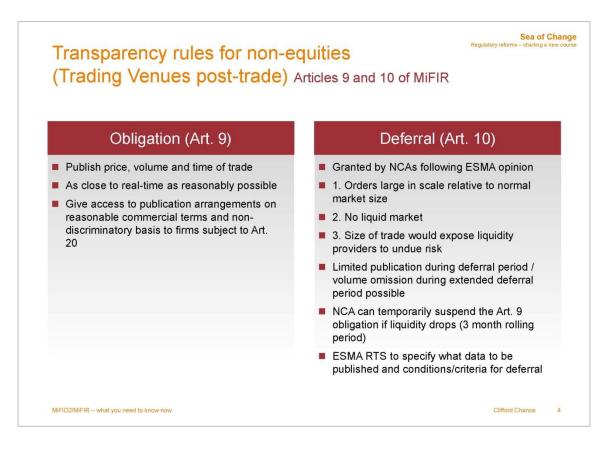
- Granted by NCAs following ESMA opinion
- 1. Orders large in scale relative to normal market size
- 2. Indications of interest in RFQ and voice trading systems above a specific size that would expose liquidity providers to undue risk
- 3. Derivatives not subject to trading obligation / other instruments without liquid market.
- NCA can temporarily suspend the Art. 7 obligation if liquidity drops (3 month rolling period)
- ESMA RTS to cover variables (size and liquidity thresholds)

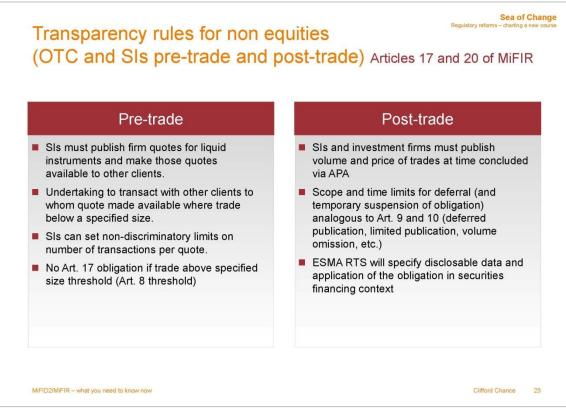
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Fixed income and derivatives markets transparency – Sean Kerr





### Derivatives execution and high frequency trading -**Caroline Dawson**



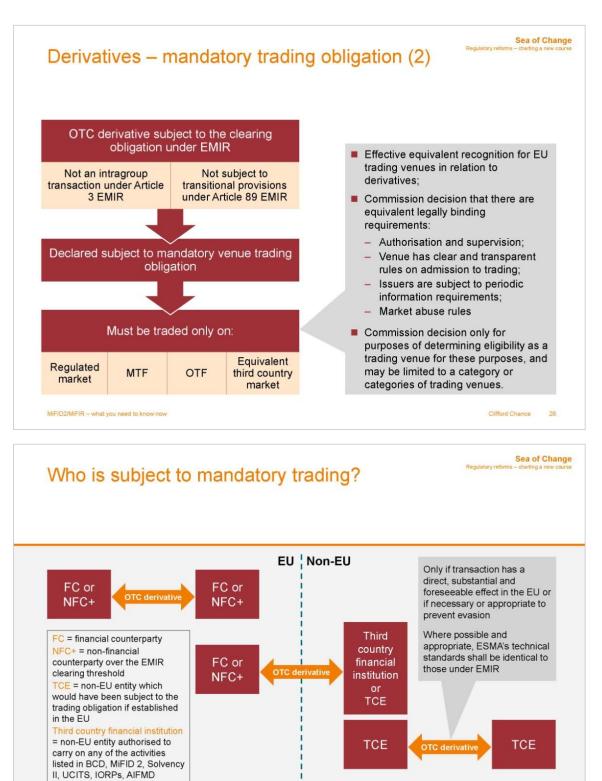
- ESMA proposes draft regulatory technical standards (RTS) to Commission within fixed period after adoption of RTS on clearing under EMIR
- Mandatory trading may be phased-in for some counterparty types
- this may pose systemic risk and to prevent regulatory arbitrage
- ESMA shall, on its own initiative, identify and notify to the Commission derivatives that should be subject to the trading obligation but which no CCP is authorised to clear under EMIR or which are not admitted to trading.

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### Speakers' Materials Derivatives execution and high frequency trading –

#### **Caroline Dawson**



Note: Exemption for duplicative or conflicting obligations. Treatment of entities exempt under Article 1(4) or 1(5) EMIR?

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### Speakers' Materials Derivatives execution and high frequency trading – Caroline Dawson

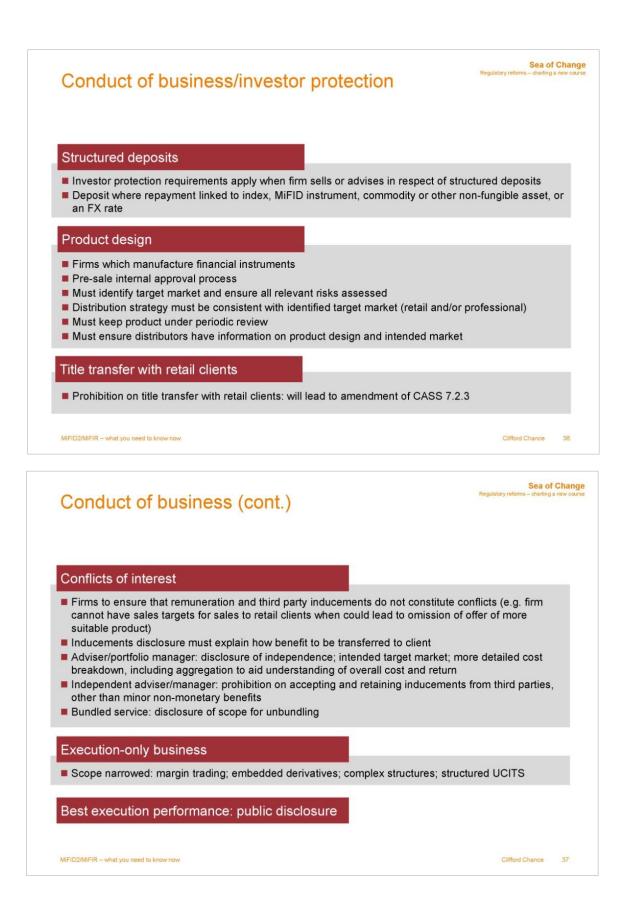


# Panel 2: Firm regulation

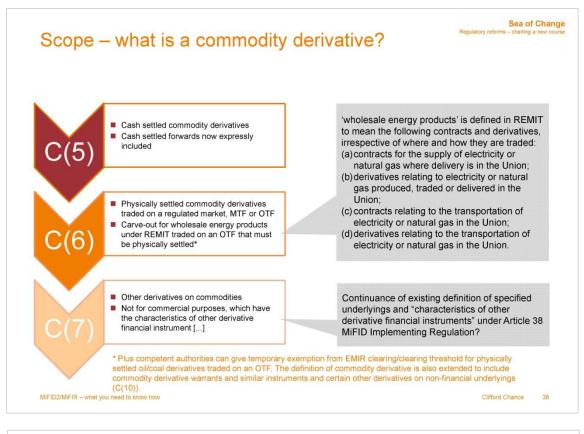
### Speakers' Materials Third country firms – Caroline Meinertz



### Speakers' Materials Conduct of business – Simon Crown



### Speakers' Materials Commodities – Chris Bates

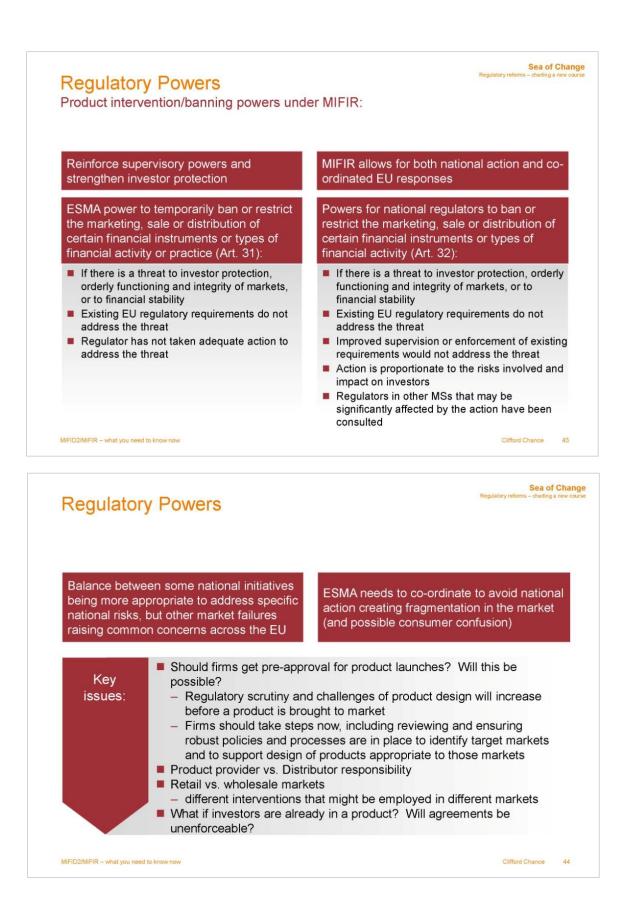




### Speakers' Materials Commodities – Chris Bates



### Speakers' Materials Regulatory powers – Owen Lysak



# **Speaker Biographies**

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### Chris Bates

Partner, London

Chris is a partner and head of the financial regulation group at Clifford Chance in London. He advises banks, securities firms and other financial institutions on issues associated with the regulatory response to the financial crisis, the impact of the EU single market programme, financial services regulation and regulatory capital, as well as advising on derivatives transactions and securities offerings and mergers and acquisitions in the financial sector. He is also an active participant in industry committees and working groups on regulatory issues. He is currently a member of the International Regulatory Strategy Group advising the City of London and TheCityUK on regulatory issues.



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### Simon Crown

Partner, London

Simon joined Clifford Chance in 1998 and is a partner specialising in financial regulation. Simon's focus is in the areas of M&A involving financial institutions, funds and asset management, prudential regulation (including Basel III), market infrastructure, client money and client assets regulation, financial services outsourcing, payments and transaction services, and European Directives relating to financial services, with a current focus on the Alternative Investment Fund Managers Directive.



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#### **Caroline Dawson**

Senior Associate London

Caroline is a senior associate in the financial regulation group in Clifford Chance's London office, specialising in advising financial institutions and other market participants on financial market regulation, mergers and acquisitions in the financial sector and securities and derivatives transactions. She also participates in industry committees and working groups on financial regulatory issues. She was seconded to the EMEA equities team at Goldman Sachs in 2009.



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#### Sean Kerr

Senior Associate London

Sean is a senior associate in the financial regulation group in Clifford Chance's London office. He advises banks and non-bank financial institutions on diverse regulatory matters, focusing in particular on clearing and settlement and the regulation of transaction services providers and financial market infrastructure. Between 2009 and 2011 he was seconded to the International Monetary Fund in Washington, D.C., contributing to the Fund's technical assistance and surveillance work on crisis management and bank resolution.

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Simon Gleeson Partner T: +44 20 7006 4979 E: simon.gleeson @cliffordchance.com

#### Simon Gleeson

Partner, London

Simon specialises in financial markets law and regulation. He has advised Governments, regulators and public bodies as well as banks, investment firms, fund managers and other financial institutions on a wide range of regulatory issues. He advised the World Economic Forum on their report on their 2009 Report on The New Global Financial Architecture, and has worked with regulators and governments around the world on the establishment of regulatory regimes. He has been a member of the Financial Markets Law Committee, chairs the Institute of International Finance's Committee on Cross-Border Bank Resolution, has written numerous books and articles on financial regulation, and is the author of "International Regulation of Banking", recently published by Oxford University Press.



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#### Owen Lysak

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Owen is a senior associate in the financial regulation group, specialising in advising financial institutions and other market participants on financial market regulation, mergers and acquisitions in the financial sector, securities and derivatives transactions, AIFMD and custody, clearing and settlement services. He was seconded to the General Counsel's Division of the UK FSA during 2012, working in the deposit-takers' team. He was also seconded to the Global Transaction Services team at Citibank in 2006 and the EMEA equities team at Goldman Sachs in 2008.



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#### **Caroline Meinertz**

Senior Associate, London

Caroline is a senior associate in the financial regulation group at Clifford Chance in London. Caroline advises many of the world's leading financial institutions on the implications of financial services regulation and law on their businesses. Caroline has been previously seconded to Morgan Stanley (London) and BNP Paribas (Paris). She is a fluent German and French speaker.



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### Monica Sah

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Monica is a partner in the financial regulation group, specialising in financial markets law and regulation. Previously, she was a Managing Director at Morgan Stanley and Head of Legal for International Wealth Management. Monica advises financial institutions (sell-side and wealth managers) on a full range of legal and regulatory issues on maintaining a multi product and jurisdictional platform, including cross custody and client money issues, product development, platform expansions, enforcement of collateral arrangements and client assets segregation issues. She also advises on FIG M&A transactions. Recently she has been advising the FOA and other trade associations on the EU Regulation Implementation Handbook and a number of custodian banks and the Association of Global Custodians on the implementation of the Alternative Investment Fund Managers Directive (AIFMD).

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