



UP TO 11.25  
CPD/CLE  
HOURS  
AVAILABLE\*

# 31st International Financial Law Conference

14–16 May 2014 Nouveau Centre de Conférence Kirchberg/European Congress Centre, Luxembourg

A conference co-presented by the IBA Banking Law Committee and IBA Securities Law Committee, supported by the IBA European Regional Forum

## Topics include:

- Market abuse regulation – case studies, civil actions
- The single supervisory mechanism – who leads the charge?
- Sale and restructuring of cross-border distressed loan portfolios
- EMIR and Dodd-Frank: convergence or dislocation
- The recent case law of the European courts – we have been privileged to secure the Court of Justice of the European Union to hold this session
- Exchange offers
- Update on loan documentation

## Who should attend?

All finance securities and banking lawyers, whether in private practice or working in-house, and those working generally in the banking and finance industry.



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the legal profession

\*As per the Solicitors Regulation Authority of England and Wales. The number of CPD points/hours available may vary for other bar associations and law societies depending on their criteria.

# Programme

## Conference Co-Chairs

Ewa Butkiewicz *Wardynski & Partners, Warsaw; Chair, Financial and Banking Law Conferences Subcommittee, IBA Banking Law Committee*  
Florian Khol *Binder Grösswang Rechtsanwälte GmbH, Vienna; Chair, Financial Conferences Subcommittee, IBA Securities Law Committee*

## Local Host Committee

### Co-Chairs

Philippe Dupont *Arendt & Medernach, Luxembourg*  
Michel Molitor *MOLITOR Avocats à la Cour, Luxembourg*  
Pit Reckinger *Elvinger Hoss & Prussen, Luxembourg; Vice-Chair, IBA Securities Law Committee*

## Wednesday 14 May

### 1600 – 1800 Registration

### 1900 – 2100 Welcome reception

*European Investment Bank, 98-100, Boulevard Konrad Adenauer, 2950 Luxembourg*

Presentations will be made by Nicola Barr, General Counsel of the EIB and Delphine Munro, Head of Arts of the EIB. Delegates will also be given the opportunity to visit the exceptional art collection of the EIB.

The reception is open to all delegates and registered guests. Please indicate your attendance at this event on the registration form.

### Continuing Professional Development/Continuing Legal Education

For delegates from countries where CPD/CLE is mandatory, the International Bar Association will be pleased to provide a Conference Certificate of Attendance which, subject to the exact CPD/CLE requirements, may be used to obtain the equivalent accreditation in your jurisdiction.

This conference has been accredited for CPD/CLE by the Solicitors Regulation Authority of England and Wales. New York and Californian attorneys may submit their certificates of attendance issued, and apply this credit earned to their New York and Californian CLE requirement. Delegates should ask staff at the registration desk for information as to how to obtain the hours.

The organisers may at any time, with or without giving notice, in their absolute discretion and without giving any reason, cancel or postpone the conference, change its venue or any of the other published particulars, or withdraw any invitation to attend. In any case, neither the organisers nor any of their officers, employees, agents, members or representatives shall be liable for any loss, liability, damage or expense suffered or incurred by any person, nor will they return any money paid to them in connection with the conference unless they are satisfied not only that the money in question remains under their control but also that the person who paid it has been unfairly prejudiced (as to which, decision shall be in their sole and unfettered discretion and, when announced, final and conclusive).

## Thursday 15 May

### 0800 – 1730 Registration

### 0900 – 0910 Welcome address from the Conference Co-Chairs

### 0910 – 0930 Keynote Speaker

Pedro de Lima *Head of Economic Studies, European Investment Bank, Luxembourg*

### 0930 – 1030 Market abuse regulation – case studies (civil actions)

In July 2013 the Council of the European Union published the consolidated version of the political agreement with the European Parliament regarding the proposal for a regulation of the EP and Council on insider dealing and market manipulation (market abuse) (MAR). In September 2013 the EP confirmed its agreement with the text. The second part of the legislative initiative for the reform of the market abuse regime in the EU is the proposed directive on criminal sanctions, which is expected to be adopted by the end of 2013.

The new legislative framework at EU level, which will have direct application through the use of a regulation, for the main framework, creates a new common legal regime for market abuse both in relation to offences, preventive measures and sanctions.

However, the MAR does not address issues relating to the possibility of civil actions brought by investors or other forms of civil actions for indemnification resulting from market abuse offences.

The legal hurdles for such actions have already been discussed in legal writing, but in the wake of the adoption of the MAR it is interesting to analyse the current state of play in the major jurisdictions especially in the EU, with a comparison to other major financial markets such as the USA or the financial markets in Asia.

### Session Chair

Philippe Hoss *Elvinger Hoss & Prussen, Luxembourg*

### Speakers

Kathy Hughes *Slaughter & May, London*

Hartmut Krause *Allen & Overy, Frankfurt*

Natalia Nicolaidis *Managing director of Credit Suisse Securities (Europe) Ltd, London*

Erich T Schwartz *Skadden Arps Slate Meagher & Flom, Washington DC*

### 1030 – 1100 Coffee/tea break

## Conference luncheon sponsors

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 **Luxembourg for Finance**  
Agency for the Development of the Financial Centre

1100 – 1215 **The single supervisory mechanism – who leads the charge?**

This session will focus on the establishment of a unique common banking oversight regime for the Euro area and its ongoing implementation by the European Central Bank. What are the core elements of the new bank regulatory framework? Which banks will become subject to the ECB's supervision? ECB vs EBA – balance of power or power in the balance? What is the role of national supervisors within the SSM? What will the impact of ECB regulation be on non-Euro Area banks and non-Euro Area branches of SSM banks? Is the SSM a role model for the future of bank regulation? After the 'single supervisory mechanism': What can be expected from a 'single resolution mechanism'?

*Session Chair*

**Dirk H Bliesener** *Hengeler Mueller, Frankfurt am Main; Chair, International Financial Law Reform Subcommittee, IBA Banking Law Committee*

*Speakers*

**Jean Guill** *Director General, Commission de Surveillance du Secteur Financier CSSF, Luxembourg*

**Bernhard Hörtnagl** *Head of Division, Austrian Financial Market Authority FMA, Vienna*

**Mikael Stenström** *Head of Division, European Central Bank, Frankfurt am Main*

**Urs Zulauf** *Credit Suisse, Zurich; former member of Executive Board and General Counsel of Swiss Financial Market Supervisory Authority FINMA*

1215 – 1330 **Lunch**

1330 – 1500 **Sale and restructuring of cross border distressed loan portfolios**

Over the last 18 months or so there has been a significant increase in cross border distressed debt loan portfolios being restructured and sold in Europe. These transactions raise a number of complex legal issues in relation to the restructuring and sale of debt. This session will provide an overview of the key legal issues in relation to such restructurings together with focus on some of the most pertinent points encountered in the market, ranging from the transfer of collateral and other security arrangements to creditor and court approval mechanism. The panel will include both leading lawyers and financiers dealing with distressed cross border loan portfolios.

*Session Co-Chairs*

**Pii Ketvel** *Chief Executive Officer, Marcol Capital Europe SA, Luxembourg; Advisory Board Member, IBA European Regional Forum*

**Michel Molitor**

*Speakers*

**Robert Cain** *Arthur Cox, Dublin*

**Johan Häger** *Roschier, Stockholm; Vice-Chair, Financial and Banking Law Conferences Subcommittee, IBA Banking Law Committee*

**Philip R Wood QC** *Allen & Overy, London*

1500 – 1530 **Coffee/tea break**

1530 – 1700 **EMIR and Dodd-Frank: convergence or dislocation**

The requirements of EMIR and Dodd-Frank have a direct or indirect effect on all entities active in the EU and US derivatives markets. Whilst their objectives are broadly similar, they are not fully aligned and they give rise to duplication of effort and inconsistency.

This session will focus on topical issues on the interaction between EMIR and Dodd-Frank in the context of derivatives, including the following:

- the extra-territorial application of EMIR and Dodd-Frank and the related risk of overlap;
- determinations of equivalence under EMIR and determinations of comparability for substituted compliance under Dodd-Frank;
- the mutual recognition of central counterparties (EMIR), trade repositories (EMIR), derivative clearing organisations (Dodd-Frank) and swap data repositories (Dodd-Frank);
- regulated and excluded derivatives and other transactions;
- the concepts of EU regulated markets and 'equivalent' non-EU markets
- global legal entity identifiers (LEI);
- the approaches and policies of the relevant authorities in the EU (European Commission, ESMA and national regulators) and the US (CFTC and SEC) on derivatives.

*Session Chair*

**Jan Putnis** *Slaughter and May, London*

*Speakers*

**Colin D Lloyd** *Cleary Gottlieb Steen & Hamilton, New York*

**Christian Schmies** *Hengeler Mueller, Frankfurt*

2000 **Hosted dinner**

*Cercle Cité, Place d'Armes, 2 rue Genestre, 2012 Luxembourg*

Built between 1906 and 1909, the Cercle municipal has continuously been transformed and refurbished. In 1952 the Grande Salle was remodelled to accommodate the Court of the ECSC, and in the 1970, as the Court moved out, it was again comprehensively renovated. For the Centennial Anniversary of the Dynasty in 1989, the Cercle was fully renovated for the first time, but in 2003 the city council decided it was time to adapt the building to contemporary needs and requirements. The rejuvenation ensures that the Cercle will continue to play a vital role in the development of the city's cultural offer.

The Cercle-Cité is a vibrant multifunctional infrastructure in the heart of the capital of Luxembourg, and a unique venue on Place d'Armes. This evening's event takes place in the beautiful ballroom, (or Grande Salle), providing a distinguished location for beautiful event.

Transport will depart from the Nouveau Centre de Conférence Kirchberg / European Congress Centre at 1830.

Open to all delegates and registered guests.



**Conference refreshment break sponsor**



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## 0800 – 1300 **Registration**

*Court of Justice of the European Union*

*Boulevard Konrad Adenauer Kirchberg, 2925 Luxembourg*

## 0900 – 0945 **Opening address**

**Judge Koen Lenaerts** *Vice-President, Court of Justice of the European Union, Luxembourg*

## 0945 – 1100 **The recent case law of the Court of Justice of the European Union and the General Court of the European Union on banking and financial law**

The session will focus on the latest case law of the Court of Justice and the General Court of the European Union on banking and financial law matters.

1. In particular, the panel will discuss whether national laws can impose stricter requirements than EU laws for the purpose of ensuring investments and consumers protection in banking and financial transactions.

Is a national rule which provides for the liability of the public limited liability company, as issuer, towards a purchaser of shares, for infringement of obligations relating to the provision of information laid down in the law governing capital markets compatible with the principles of Second Directive 77/91?

In the context of the prevention of the use of the financial system for the purposes of money laundering, does Directive 2005/60 preclude a Member State's national legislation which requires credit institutions carrying on their activities under the freedom to provide services in that Member State to report suspicious financial transactions directly to the Financial Intelligence Unit of that Member State?

2. The panel will also discuss a series of recent rulings relating to freezing of assets, in which the Court of Justice of the European Union overturned economic sanctions issued by the Council of the European Union on several Iranian banks. The Council of the EU had sanctioned these entities for their support of nuclear proliferation activities in Iran, but the Court determined that the EU lacked sufficient evidence to introduce such sanctions. Are banks that deal with Iranian entities excluded by the European Courts from the sanctions lists safe in Europe and what is the impact of US sanctions regulations?

### *Session Co-Chairs*

**Claudia Bruscaioni** *Macchi di Cellere Gangemi, Milan*

**Philippe Dupont**

### *Speakers*

**Stephen Ashley** *Stephenson Harwood, London*

**Judge José Luis da Cruz Vilaça** *Court of Justice of the European Union, Luxembourg*

**Fernando Minguez** *Cuatrecasas, Madrid*

**Judge Irena Pelikanova** *Court of Justice of the European Union, Luxembourg*

**John B Reynolds III** *Davis Polk & Wardwell, Washington DC*

**Andreas Zahradnik** *Dorda Brugger Jordis, Vienna*

## 1100 – 1130 **Coffee/tea break**

## 1130 – 1300 **The recent case law of the Court of Justice of the European Union session continues**

## 1300 – 1730 **Registration**

*Nouveau Centre de Conférence Kirchberg/European Congress Centre*

## 1300 – 1430 **Lunch at the Nouveau Centre de Conférence Kirchberg/European Congress Centre**

## 1430 – 1545 **Exchange Offers**

The financial crises of the last two decades have prompted the emergence and rise to prominence of exchange offers. The session will focus on exchange offers involving 'debt-for-equity swaps' and 'debt-for-debt swaps'.

The panel will examine the reasons underlying the use of exchange offers as a tool in debt restructuring and other contexts. In the context of debt restructuring, a distressed company may seek to use debt exchange offers as a means to reduce its total outstanding debt, this being achieved where; for instance, an unsecured debt of higher face value is exchanged for a secured debt of lower face value. Alternatively, a company may push out maturities by exchanging bonds nearing the maturity date but with low coupon rate for bonds with an extended maturity date but higher coupon rate. The panel will also undertake a cross-jurisdictional comparison of the features of the exchange offer process; including the types of incentives given to security holders in exchange offers and issues of taxation. Further, exchange offers have received unfavorable reaction from existing security-holders on a number of occasions. Investors holding senior bonds may be dissatisfied with the dilution of their holdings when the issuer makes an exchange offer exchanging junior bonds for senior bonds. In light of this, the panel will discuss how the expectations of security-holders can be managed and how their interests can be protected. Finally, the panel will examine if present circumstances call for tighter regulations; and if implemented, the potential costs or drawbacks.

### *Session Co-Chairs*

**Jerry Koh** *Allen & Gledhill, Singapore; Vice-Chair, IBA Securities Law Committee*

**Alfred L J Page** *Borden Ladner Gervais, Toronto; Senior Vice-Chair, IBA Securities Law Committee*

### *Speakers*

**Benedickt Maurenbrecher** *Homburger, Zurich; Young Lawyers' Liaison Officer, IBA Banking Law Committee*

**Andreas Meyer** *Deutsche Bank, Frankfurt; Vice-Chair, IBA Securities Law Committee*

**Stephen Powell** *Slaughter & May, London*

**Vivian Root** *Sidley Austin, London*

## 1545 – 1615 **Coffee/tea break**

## 1615 – 1730 **More than just paper: recent trends in financing documentation**

This panel will explore the 'new normal' in loan documentation, including covenants and 'covenant-lite' structures, unitranche lending, clauses reflecting recent regulatory developments and standardisation of agreement templates. The discussion will include trends in the negotiation process, including borrower-side responsibility for drafting. The speakers, all leaders in the field, will cover developments in major financial markets, and also some interesting developments in markets that are less well known. They also will comment on the larger implications of these trends for the banking sector generally.

### *Session Chair*

**Russell DaSilva** *Hogan Lovells, New York; Vice-Chair IBA Banking Law Committee*

### *Speakers*

**Matthew Ayre** *Travers Smith, London*

**Matthias Chmielewski** *Principal Counsel, European Bank for Reconstruction and Development, London*

**Eric Rosof** *Wachtell Lipton, New York*

**Lukasz Szegda** *Wardyrski&Partners, Warsaw*

## 1900 **Conference dinner**

*Golf Club Grand-Ducal Luxembourg*

*1 route de Trèves, 2633 Senningerberg*

This evening's dinner will take place at the Luxembourg's most prestigious golf club. Set in beautiful grounds, the Grand Ducal has a strong sense of tradition, reflected in the understated opulence of the Clubhouse behind its discrete facade. Enjoy a nice relaxing end to the conference in this wonderful setting.

Price: €90

Transport will be provided. Further information will be included on the ticket.