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Global Securities Group Client Alert

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FORM 20-F DISCLOSURE UPDATE - EUROPEAN SOVEREIGN DEBT EXPOSURE

The staff of the U.S. Securities and Exchange Commission (the “SEC”) has recently issued guidance on disclosure obligations for reporting issuers, including foreign private issuers, with exposure to certain European debt.¹ The SEC staff expressed primary concerns for financial institutions that are SEC registrants as a result of the lack of information in the markets with regard to European sovereign debt holdings. The release seeks to achieve conformity among disclosures being provided by registrants in relation to their European debt holdings.

The SEC guidance does not impose a new disclosure requirement, but takes the form from the SEC staff’s view as clarification of existing disclosure obligations. The Management’s Discussion and Analysis portion of Form 20-F requires issuers to identify known trends, demands, commitments, events or uncertainties that are reasonably likely to materially affect an issuer’s liquidity, and to describe any known trends or uncertainties that have had, or are reasonably expected to have, a material impact on results of operations. Furthermore, issuers are already required to provide risk disclosure, including market risk, when applicable, while avoiding generic risk disclosure.

The SEC guidance directs registrants to focus on countries experiencing significant economic, fiscal or political strains resulting in a higher likelihood of default, and to disclose the basis used in making these determinations. The guidance sets forth specific outlines of country-by-country disclosures, segregated between sovereign and non-sovereign (i.e., exposure to corporate level debt, loans to retail customers, financial institutions) exposure, and be expressed on a gross basis, with descriptions of gross unfunded commitments. If material, the disclosure should be separated for financial and non-financial institutions. Issuers should also disclose any hedging arrangements, the nature of the counterparty, and any other risks associated with the relevant hedges, including the circumstances under which losses may not be covered by purchased credit protection.

The guidance also reminds issuers that they should include disclosure regarding how their management is monitoring and/or mitigating exposure to European debt that may be affected by the ongoing crisis, including indirect exposure and examples of and the levels of such indirect exposure. Current developments concerning the affected countries, and

¹ Guidance available on the SEC’s website at <http://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic4.htm>.

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March 1, 2012

how such developments may impact a registrant's financial condition, results of operation and liquidity and capital resources should also be discussed. Finally, significant developments since the reporting date and the effects of such developments on reported amounts should be disclosed where relevant.

Given the specificity of the guidance, and the likely focus of the SEC staff in reviewing Form 20-F disclosures for registrants with European debt exposure, issuers should draft any new Form 20-F disclosures after close review of the guidance.

Please feel free to discuss any aspect of this Client Alert with your regular Milbank contacts or with any member of our Global Securities group listed below.

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