European Perspective in Brief

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Europe has struggled mightily during the last several years to triage a long series of critical blows to the economies of the 27 countries that comprise the European Union as well as the collective viability of euro-zone economies. Here we provide a snapshot of some recent developments relating to insolvency and restructuring in the EU.

The U.K.—On July 26, 2012, the U.K. Pensions Regulator issued a statement on financial support directions ("FSDs") with the intention of providing further guidance regarding the circumstances under which it will issue an FSD after a company has been placed into administration under the U.K. Insolvency Act 1986, as amended by the U.K. Enterprise Act 2002. Following the October 2011 rulings issued in connection with Lehman Brothers and Nortel Networks (*Bloom v. The Pensions Regulator* [2011] EWCA CIB 1124), an FSD issued before a company goes into administration will rank as a general unsecured debt, whereas an FSD issued post-administration will rank as an expense of administration. An FSD issued after administration will therefore be discharged from floating-charge (as opposed to fixed-charge) realizations and will rank above payment of the administrator's own remuneration. The priority of FSDs over floating-charge holders could have a material impact on returns to secured creditors, particularly where there are few or no fixed-charge assets.

The current ranking of FSDs issued after administration is of great concern to insolvency practitioners and lenders. In response to these concerns, the Pensions Regulator has stated that it has no intention of deliberately delaying the issuance of an FSD until a company goes into administration (and therefore taking advantage of the post-insolvency priority ranking). In addition, the Pensions Regulator has stated that, in most circumstances, it will not object to an application made by an administrator to reorder the statutory priorities so that a claim for payment of the administrator's reasonable remuneration will rank ahead of an FSD. The Pensions Regulator also advised that in the forthcoming appeal to the U.K. Supreme Court arising from the Lehman Brothers and Nortel Networks matters (scheduled to be heard on May 14, 2013), it will argue that an FSD issued after the commencement of an administration proceeding should rank in priority as a general unsecured debt rather than an expense of administration. Although welcome, the statement is unlikely to provide the certainty hoped for by stakeholders from the U.K. Supreme Court in connection with the appeal.

Other recent European developments can be tracked in Jones Day's *EuroResource*.