

## Financial Regulatory Developments Focus



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**In this newsletter, we provide a snapshot of the principal European, US and global financial regulatory developments of interest to banks, investment firms, broker-dealers, market infrastructures, asset managers and corporates.**

### Derivatives

#### US Commodity Futures Trading Commission and Australian Authorities Sign Memorandum of Understanding to Enhance Supervision of Cross-Border Clearing Organizations

On 5 June 2014, the US Commodity Futures Trading Commission (“CFTC”) announced that the CFTC and the Reserve Bank of Australia and Australian Securities and Investments Commission (“Australian Authorities”) have entered into a Memorandum of Understanding (“MOU”) regarding cooperation and the exchange of information in the supervision and oversight of clearing organizations that operate on a cross-border basis in the United States and in Australia.

Through the MOU, the CFTC and the Australian Authorities express their willingness to cooperate in the interest of fulfilling their respective regulatory mandates.

The full text of the CFTC and Australian Authorities MOU is available at:

<http://www.cftc.gov/ucm/groups/public/@internationalaffairs/documents/file/cftc-rba-asic-clearingmou06051.pdf>.

#### CFTC Staff Issues Extension to Time-Limited No-Action Letter on the Applicability of Transaction-Level Requirements in Certain Cross-Border Situations

On 4 June 2014, the CFTC’s Division of Swap Dealer and Intermediary Oversight, Division of Clearing and Risk, and Division of Market Oversight issued a time-limited no-action letter that extends relief to swap dealers (“SDs”) registered with the CFTC that are established under the laws of jurisdictions other than the United States (“Non-US SDs”) from certain transaction-level requirements under the Commodity Exchange Act.

The letter provides no-action relief to Non-US SDs until 31 December 2014, subject to the limitations in the letter.

The full text of the CFTC no-action letter is available at:

<http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-74.pdf>.

## Capital and Prudential Regulation

### Transitional Dates under CRR and EMIR Extended

On 4 June 2014, certain transitional dates under the Capital Requirements Regulation (the “CRR”) and the European Market Infrastructure Regulation (“EMIR”) were extended from 15 June 2014 to 15 December 2014 by secondary legislation. The first extension ensures that a financial institution established in the EU which is required to clear transactions through a central counterparty (“CCP”) will be able to calculate its own fund requirements as if the CCP had already been authorized or recognized under EMIR and considered to be a qualifying CCP under the CRR. Without this extension, institutions would be subject to higher capital requirements for their exposures to CCPs which are not yet authorized or recognized. The second extension delays the obligation of certain CCPs to report the total amount of initial margin received from clearing members. The legislation came into force on 5 June 2014.

The legislation is available at:

[http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.165.01.0031.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.165.01.0031.01.ENG).

### Application of Additional Risk Weights for Material Infringement of Securitisation Requirements Clarified

On 5 June 2014, secondary legislation to the CRR was published which sets out (i) the factors that a national regulator should take when assessing whether to impose an additional risk weight for material infringement of the securitization requirements due to negligence or omission; and (ii) the formula to be used for calculation of an additional risk weight. The secondary legislation comes into force 20 days after publication in the Official Journal of the European Union.

The legislation is available at:

[http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.166.01.0022.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.166.01.0022.01.ENG).

### EU Rules on G-SIIs

On 5 June 2014, the European Banking Authority (“EBA”) published final draft regulatory technical standards (“RTS”) on the methodology for national regulators to identify global systemically important institutions (“G-SIIs”) and final draft implementing technical standards (“ITS”) on the disclosure by G-SIIs of the values used for the identification and scoring process. A G-SII will be subject to increased disclosure rules as well as capital requirements. The identification of G-SIIs will take place in January 2015 for the first time and the higher capital requirement will apply from 2016. The EBA also published final guidelines on disclosure of indicators of global systemic importance which will apply to all large entities with exposures exceeding EUR 200 billion and require disclosure of the same indicators by those entities.

The final draft RTS are available at:

<http://www.eba.europa.eu/documents/10180/717782/EBA-RTS-2014-07+%28Final+Draft+RTS+on+G-SII+identification%29.pdf>.

The ITS are available at:

<http://www.eba.europa.eu/documents/10180/717707/EBA-ITS-2014-03+%28Final+Draft+ITS+on+G-SII+disclosure+of+indicators%29.pdf>.

The final guidelines are available at:

<http://www.eba.europa.eu/documents/10180/717755/EBA-GL-2014-02+%28Guidelines+on+disclosure+of+indicators+of+systemic+importance%29.pdf>.

#### **Final Draft ITS for Disclosure of Leverage Ratio**

On 5 June 2014, the EBA published final draft ITS on disclosure for the leverage ratio under the CRR. Once adopted by the European Commission, the ITS will be directly applicable across the EU. The European Commission has the power to change the calculation of the leverage ratio before disclosure of the ratio begins on 1 January 2015. The EBA therefore states that the final draft ITS are general in nature and that the templates and instructions may be subject to change.

The final draft ITS are available at:

<http://www.eba.europa.eu/documents/10180/717567/EBA-ITS-2014-04+%28Final+Draft+ITS+leverage+ratio+disclosure%29.pdf>.

#### **Report on Obstacles to Free Movement of Capital between EU Banks**

On 5 June 2014, the European Commission published a report on the possible legal obstacles to the free movement of funds between EU banks or investment firms within a single liquidity sub-group. Under the CRR, the Commission is obliged to report on whether any legal obstacles exist to banks entering contracts that provide for the free movement of funds between them to enable the bank or investment firm to meet its individual or joint obligations as such obligations become due. The report concludes that there are currently no relevant legal obstacles and therefore no need for the Commission to make any legislative proposals on the issue. The European Commission will continue to monitor the situation and will take appropriate action as required.

The report is available at:

<http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-327-EN-F1-1.Pdf>.

#### **Federal Bank Regulatory Agencies Seek Comment on Interagency Effort to Reduce Regulatory Burden**

On 4 June 2014, the Federal Financial Institutions Examination Council, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation (“FDIC”) and the Board of Governors of the Federal Reserve System (“Federal Reserve Board”) issued a notice seeking comment on regulations from three categories: Applications and Reporting; Powers and Activities, and International Operations. The Economic Growth and Regulatory Paperwork

Reduction Act of 1996 (“EGRPRA”) requires that federal agencies review regulations issued by the agencies at least every 10 years and also requires that the agencies categorize the regulations and publish the regulations for public comment and to identify areas in such regulations that are outdated, unnecessary or unduly burdensome.

The public will have until 2 September 2014 to review and comment on this first set of categories.

The agencies plan to schedule roundtable discussions with bankers and interested parties and will publish details about these sessions on the EGRPRA website as they are finalized.

The full text of the federal register notice is available at:

<http://www.fdic.gov/news/news/press/2014/pr14043a.pdf>.

### **FDIC Announces Improvements to Deposit Insurance Education Materials**

On 9 June 2014, the FDIC announced new improvements to the deposit insurance education materials available on the FDIC’s website, <http://fdic.gov/>. The enhancements are designed to improve the accessibility and presentation of deposit insurance information for the general public through organizational changes as well as through the expanded use of explanatory videos and interactive infographics. The changes are designed to allow the public to quickly access basic information while still offering the in-depth and comprehensive deposit insurance information that has traditionally been available.

## **Remuneration**

### **Criteria for Identifying Staff Having a Material Impact on a Firm’s Risk Profile Published**

On 6 June 2014, secondary legislation under the Capital Requirements Directive setting out RTS on the qualitative and quantitative criteria to identify staff whose professional activities have a material impact on an institution’s risk profile was published in the Official Journal of the European Union. Any staff member of an institution which meets any of the qualitative or the quantitative criteria must be identified as having a material impact on an institution’s risk profile. The RTS comes into effect on 26 June 2014.

The legislation is available at:

[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL\\_2014\\_167\\_R\\_003&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_167_R_003&from=EN).

## **Credit Ratings**

### **IOSCO Consults on Reducing Reliance on Credit Rating Agencies in Asset Management**

On 4 June 2014, the International Organization of Securities Commissions launched a consultation on good practices for reducing reliance on credit rating agencies in asset management. The consultation sets out eight proposed good

practice for investment managers and national regulators to follow to reduce the reliance on credit ratings issued by rating agencies. Responses to the consultation are due by 5 September 2014.

The paper is available at:

<http://www.iosco.org/library/pubdocs/pdf/IOSCO442.pdf>.

## Funds

### Implementing Regulations under Venture Capital Funds Regulation and Social Entrepreneurship Funds Regulation Published

On 4 June 2014, Implementing Regulations under the Venture Capital Funds Regulation and Social Entrepreneurship Funds Regulation were published in the Official Journal of the European Union. The Implementing Regulations set out the format for notification by national regulators of the use of the EU passport mechanism by a venture capital fund or a social entrepreneurship fund.

The Regulations are available at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2014:165:TOC>.

## Financial Services

### European Commission Requests Technical Advice from EBA for Criteria for Product Intervention Powers under MiFIR

On 3 June 2014, the European Commission published its request to the EBA for technical advice on the product intervention framework for structured deposits under the Markets in Financial Instruments Regulation (“MiFIR”). Under MiFIR, ESMA, the EBA and national regulators will have the power to prohibit or restrict in Member States, the marketing, distribution or sale of certain financial instruments or structured deposits or a specific financial activity or practice when there is a threat to the orderly functioning of the financial or commodity markets, the stability of the whole or part of a Member State’s financial system or if there are significant investor protection concerns. The European Commission is due to adopt secondary legislation setting out the criteria and factors that national regulators must take into account when considering using their product intervention powers. The request for technical advice, addressed to ESMA on 23 April 2014, includes a request for advice on the product intervention framework. The European Commission requests that the EBA and ESMA work together to develop their technical advice, which is to be provided to the Commission six months after MiFIR comes into force (currently expected in June 2014).

The European Commission’s request to the EBA is available at:

[http://ec.europa.eu/internal\\_market/securities/docs/isd/mifid/140516-request-for-e-ba-technical-advice-concerning-mifid-2\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/isd/mifid/140516-request-for-e-ba-technical-advice-concerning-mifid-2_en.pdf).

## Enforcement

### ESMA Issues Public Notice of S&P's Internal Control Failings

On 3 June 2014, ESMA published a public notice censuring Standard & Poor's for internal control failings in breach of the Credit Rating Agencies Regulation.

ESMA is responsible for the regulation and supervision of credit rating agencies registered under the Credit Rating Agencies Regulation, which includes powers to withdraw registration, impose fine and issue public notices. The censure of Standard & Poor's relates to an erroneous publication in 2011 by the credit agency to its Global Credit Portal stating that France's credit rating had been downgraded.

The public notice is available at:

[http://www.esma.europa.eu/system/files/2014-544\\_-\\_decision\\_supervisory\\_measure\\_articles\\_23e\\_and\\_24\\_of\\_regulation\\_1060-2009.pdf](http://www.esma.europa.eu/system/files/2014-544_-_decision_supervisory_measure_articles_23e_and_24_of_regulation_1060-2009.pdf).

### Study on EU Criminal Sanctions Legislation

On 3 June 2014, the European Commission published a paper (prepared by Thomson Reuters and Aranzadi) on criminal sanctions in Member States which assesses the sanctions available under national law for money laundering, fraud with no cash means of payment and drug trafficking, amongst others. The paper recommends the introduction of common minimum rules on the definition of criminal offences, applicable sanctions, aggravating circumstances and the situations where divergence from prosecution (for example, for settlements) is acceptable.

The paper is available at:

[http://ec.europa.eu/justice/criminal/document/files/sanctions\\_delivery\\_en.pdf](http://ec.europa.eu/justice/criminal/document/files/sanctions_delivery_en.pdf).

## Events

10 June: The Consumer Financial Protection Bureau's Semi-Annual Report to Congress (US Senate Committee on Banking, Housing and Urban Affairs)

## People

### Federal Reserve Board Announces Appointment of Eric S. Belsky as Director of the Division of Consumer and Community Affairs

On 6 June 2014, the Federal Reserve Board announced the appointment of Eric S. Belsky as Director of the Division of Consumer and Community Affairs. He is expected to start at the Federal Reserve Board in August.

The full text of the press release announcing the appointment is available at:

<http://www.federalreserve.gov/newsevents/press/other/20140606a.htmEvents>.

7 and 8 July 2014: ESMA Open Hearings on MiFID II covering markets issues, investor protection and commodity derivatives. Information available at:

<http://www.esma.europa.eu/news/ESMA-announces-three-open-hearings-MiFID-II?t=326&o=home>.

This newsletter is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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