



Financial Regulatory Developments Focus

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

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Bank Prudential Regulation & Regulatory Capital

Regulations on Methodology for Calculation of Fixed Costs by Investment Firms

On March 24, 2015, a Commission Delegated Regulation was published in the Official Journal of the European Journal, which amends the Delegated Regulation on own funds requirements for investment firms based on fixed overheads. Under the Capital Requirements Regulation certain investment firms are able to use an alternative method based on a quarter of their fixed costs to calculate their total capital requirement. The amending Regulations insert into the Delegated Regulation the methodology for investment firms to calculate fixed overheads. The amending Regulations come into force on April 14, 2015.

The amending Regulations are available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_078_R_0001&from=EN.

UK Bank of England Announces Details of 2015 Stress Test

On March 30, 2015, the Bank of England published details of the 2015 stress test for the largest UK banks and building societies. The stress test, which aims to assess the resilience of banks and the banking system to severe shock, was agreed between the Financial Policy Committee and the Prudential Regulation Authority Board. It is not a variant to the EU stress test calibrated by the European Banking Authority, as was the case for the 2014 stress test. The European Banking Authority is not intending to undertake an EU-wide stress test this year. The results of the stress test will be announced in December 2015. If a firm's capital or leverage ratios fall below the threshold in the test, it is likely that the PRA will require the firm to strengthen its capital position. The PRA may also require a firm whose ratios meet the threshold to strengthen its capital position after examining capital adequacy, recovery and resolution plans and the extent to which potentially significant risks are not quantified adequately as part of the stress. Any weakness detected in the banking system will be addressed by the FPC which has a variety of powers at its disposal, including recommendations to the PRA and the Financial Conduct Authority.

The stress test details are available at:

<http://www.bankofengland.co.uk/financialstability/Documents/stresstesting/2015/keyelements.pdf>.

Financial Policy Committee Given Certain Macro-Prudential Powers of Direction

On March 25, 2015, UK legislation was enacted which gives the BoE's FPC power to issue directions to the PRA and the FCA for certain macro-prudential measures. The FPC will be able to give a direction to (i) specify a minimum leverage ratio for UK banks and PRA-designated UK investment firms; (ii) require UK banks and PRA-designated UK investment firms for which the PRA sets a strategic risk buffer to also maintain an additional leverage ratio specified by the FPC; (iii) require globally systemically important institutions to hold sufficient Tier 1 capital to satisfy an additional leverage ratio specified by the FPC; and (iv) require UK banks and PRA-designated UK investment firms to hold sufficient capital to maintain a countercyclical leverage buffer. The legislation comes into force on April 6, 2015, except for the power of direction for firms required to hold a strategic risk buffer which comes into force on January 1, 2019.

The legislation is available at: http://www.legislation.gov.uk/ukxi/2015/905/pdfs/ukxi_20150905_en.pdf.

Compensation

Financial Conduct Authority Consults on Guidance on the Application of Performance Adjustment

On March 26, 2015, the FCA published proposed guidance on the application of ex-post risk adjustment to variable compensation (also known as performance adjustment). Ex-post risk adjustment is the adjustment of variable compensation to take into account a specific crystalized risk or adverse performance outcome and includes measures such as reducing current year awards, the application of malus and clawback. The proposed guidance is intended to amend and replace the guidance consulted on by the FCA in its joint consultation paper with the PRA on strengthening the alignment of risk and reward at the end of 2014. The revised proposed guidance will only apply to dual-regulated firms – banks, building societies and PRA-designated investments firms – and not to firms that are only regulated by the FCA, as was proposed in the 2014 consultation. The FCA notes that the revised proposed guidance may need to be amended depending on the outcome of the EBA's consultation on guidelines on sound compensation policies under the EU Regulatory Capital Directive and Regulation, known as CRD IV. Responses to the FCA's consultation are due by May 7, 2015. The FCA expects that the final revised proposed guidance will come into effect in summer 2015.

The consultation paper is available at: <http://www.fca.org.uk/static/documents/guidance-consultations/gc15-02.pdf>.

Consumer Protection

US Consumer Financial Protection Bureau Considers Proposal to End Payday Debt Traps

On March 26, 2015, the US Consumer Financial Protection Bureau announced that it is considering proposing rules that would require lenders to ensure that consumers can repay their loans. The proposals under consideration would also restrict lenders from attempting to collect payment from consumers' bank accounts in ways that pile up excessive fees. The consumer protections being considered would apply to payday loans, vehicle title loans, deposit advance products and certain high-cost installment loans and open-end loans. The CFPB published an outline of the proposals under consideration in preparation for convening a Small Business Review Panel to gather feedback from small lenders, which is the next step in the rulemaking process.

A fact sheet summarizing the proposals under consideration is available at:

http://files.consumerfinance.gov/f/201503_cfpb-proposal-under-consideration.pdf and an outline of the proposals under consideration is available at: http://files.consumerfinance.gov/f/201503_cfpb_outline-of-the-proposals-from-small-business-review-panel.pdf.

Credit Ratings

Revised International Code of Conduct Fundamentals for Credit Rating Agencies

On March 24, 2015, the International Organization of Securities Commissions published its revised Code of Conduct Fundamentals for Credit Rating Agencies as part of a report on the issue. IOSCO consulted in 2012 on revisions to the Code to take into account the number of credit rating agencies that have become subject to supervision by national or regional authorities since the recent financial crisis. The updated Code (i) aims to enhance provisions on protecting the integrity of the credit rating process, managing conflicts of interest, providing transparency and safeguarding non-public information; (ii) adds measures on governance, training and risk management; and (iii) adds new definitions for key terms and revising existing definitions and terminology. The revised Code of Conduct Fundamentals for Credit Rating Agencies is intended to synchronize with the national and

regional frameworks for supervision and oversight of credit rating agencies whilst remaining the international standard for credit rating agency self-governance.

The revised Code is available at: <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD482.pdf>.

Derivatives

US Commodity Futures Trading Commission Staff Issues No-Action Position Regarding Timing for Submission of Chief Compliance Officer Annual Reports

On March 27, 2015, the US Commodity Futures Trading Commission issued a no-action letter to futures commission merchants, swap dealers and major swap participants that provides relief from certain requirements under CFTC Regulation 3.3(f). CFTC Regulation 3.3(f) requires FCMs, SDs and MSPs to submit to the CFTC annual reports by Chief Compliance Officers not more than 60 days after the end of their fiscal year. The relief grants FCMs, SDs and MSPs an additional 30 days to provide such annual reports to the CFTC. The relief will remain in effect until the adoption of a rule or rule amendment that modifies the timing requirements of CFTC Regulation 3.3(f)(2) and provides that the CFTC retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided, in its discretion.

CFTC Staff Letter No. 15-15 is available at:

<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/15-15.pdf>.

Financial Market Infrastructure

US Securities and Exchange Commission Proposes Rule to Require Broker-Dealers Active in Off-Exchange Markets to Become Members of National Securities Association

On March 25, 2015, the US Securities and Exchange Commission proposed rule amendments to require broker-dealers trading in off-exchange venues to become members of a national securities association. The amendments would seek to heighten regulatory oversight of active proprietary trading firms. The proposed amendments to Rule 15b9-1 under the Exchange Act of 1934 would narrow the current exemption available to certain broker-dealers from membership of a national securities association if the broker-dealer is a member of a national securities exchange, carries no customer accounts and has annual gross income of no more than \$1,000 that is derived from securities transactions effected otherwise than on a national securities exchange of which it is a member. The exemption was originally tailored to exchange specialists and other floor members that might need to utilize limited hedging or other off-exchange activities secondary to their floor-based business. The proposed amendments would also update the exemption that permits off-exchange transactions necessary to comply with the regulatory requirements preventing trade-throughs. The public comment period on the proposed rule amendment will last 60 days following its publication in the Federal Register.

The proposed rule is available at: <http://www.sec.gov/rules/proposed/2015/34-74581.pdf>.

UK Government and European Central Bank Agree to Cease Legal Action on CCP Location Policy

On March 29, 2015, the European Central Bank and the UK's BoE published a joint press release announcing that they had agreed to enhanced information exchange and cooperation arrangements for UK CCPs with significant euro-denominated business. Further, both central banks are extending the scope of their standing swap line order to aid the provision of multi-currency liquidity support by both central banks to CCPs established in the UK and the euro area. As a result of the measures, the UK Government announced that it would withdraw the two as yet undecided cases

brought by the UK Government against the ECB's CCP location policy. The announcements follow the General Court judgment on March 4, 2015, which annulled the ECB's Eurosystem Oversight Policy Framework which had the effect of requiring CCPs with significant euro-denominated business to be located within the eurozone. The ECB has not yet made any announcement about the documents which are the subject of the two cases to be withdrawn (Decision of 11 December 2012 on the terms and conditions of TARGET2 and the ECB's Statement of Standards published on 18 November 2011 in so far as it sets out a location policy for CCPs).

The ECB / BoE press release is available at: <http://www.ecb.europa.eu/press/pr/date/2015/html/pr150329.en.html> and the UK Government's announcement is available at: <https://www.gov.uk/government/news/government-to-withdraw-remaining-legal-challenges-to-ecb-location-policy>.

UK Payment Systems Regulator Up and Running

On March 25, 2015, the UK Payment Systems Regulator published the regulatory framework for payment systems in the UK which sets out the PSR's approach to regulation of payment systems and related industry, work programme regulatory tools and guiding principles. The new PSR is fully operational as of April 1, 2015. Two market reviews were announced alongside the publication of the regulatory framework. The first review is into the ownership and competitiveness of payment systems infrastructure which will look into the ownership of a small number of banks of both BACS, Faster Payments Services and LINK payment systems and the central infrastructure for those systems, Vocalink. The second review is into the supply of indirect access to payment systems which is provided only by Barclays, HSBC, Lloyds and RBS. The PSR is seeking comments on the scope of the reviews with a view to finalizing the terms of reference for each review by the end of May at which time more detailed timetables will be available.

The regulatory framework is available at: <https://www.psr.org.uk/sites/default/files/media/PDF/PSR%20PS15-1%20-%20A%20new%20regulatory%20framework%20for%20payment%20systems%20in%20the%20UK%20-%20Policy%20Statement.pdf>.

Financial Services

US Securities and Exchange Commission Adopts Final Rules Related to the JOBS Act

On March 25, 2015, the SEC adopted final rules to allow smaller companies better access to capital and provide investors with more investment choices. The new rules update and expand Regulation A, an existing exemption from registration for smaller issuers of securities and will enable smaller companies to offer and sell up to \$50 million of securities in a 12-month period, subject to eligibility, disclosure and reporting requirements. The rules are mandated by Title IV of the Jumpstart Our Business Startups Act and will attempt to provide investors with more investment choices, especially among smaller companies. The rules will be effective 60 days after publication in the Federal Register.

The Final Rules are available at: <http://www.sec.gov/rules/final/2015/33-9741.pdf>.

Revised Code of Best Practice for the FX Market

On March 30, 2015, a revised Global Preamble: Codes of Best Practice and Shared Global Principles was published by eight FX committees which sit in the major financial centres — Australia, Canada, Frankfurt, Hong Kong, London, New York, Singapore and Tokyo. FX market participants are expected to incorporate the guidance into their FX policies in a timely manner. The Global Preamble, last revised in 2013, covers standards of personal conduct, execution and dealing practices, confidentiality and market conduct.

The revised Global Preamble is available at:

<http://www.bankofengland.co.uk/markets/Documents/forex/fxjisc/globalpreamble.pdf>.

UK Financial Conduct Authority Publishes its Business Plan for 2015/2016

On March 24, 2015, the FCA published its business plan for 2015/2016 which indicates upcoming focus areas for the regulator and announces upcoming priorities. Key issues include: (i) conflicts of interest in dark pools; (ii) investor charges in asset management; (iii) the wholesale market study into competition in investment and corporate banking; (iv) poor culture and controls which threaten market integrity; and (v) systems and controls for financial crime.

The FCA business plan is available at: <http://www.fca.org.uk/static/documents/corporate/business-plan-2015-16.pdf>.

Funds

EU Regulations on Information on the Functioning of the EU Passport Regime under the AIFMD

Commission Delegated Regulations on the information to be provided by national regulators to the European Securities and Markets Authority on the passport for EU alternative investment fund managers managing or marketing EU alternative investment funds in the EU were published on March 27, 2015. Under the Alternative Investment Fund Managers Directive, ESMA is required to assess the functioning of the EU passport regime, the operating conditions for AIFs and their managers and the potential impact of an extension of the passport. The Regulations set out the information that national regulators will need to provide to ESMA, including the numbers of EU AIFMs authorized in their jurisdiction, problems relating to coordination between national regulators and cooperation arrangements with non-EU regulators, the effectiveness of the collection and sharing of information for monitoring systemic risk and the national regime for marketing of non-EU AIFs by EU AIFMs.

The Regulations are available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.082.01.0005.01.ENG.

MiFID II

Proposed Guidelines on the Assessment of Financial Instruments as Complex under MiFID II

On March 24, 2015, ESMA launched a consultation on proposed guidelines for the assessment of whether debt instruments and structured deposits are complex or not. Under the revised Markets in Financial Instruments Directive, known as MiFID II, investment firms are able to provide reception, transmission and execution of orders for clients without carrying out the appropriateness test subject to certain conditions being met, including that the services do not relate to financial instruments that are (i) bonds, other forms of securitized debt and money market instruments incorporating a structure which makes it difficult for a client to understand the risk involved; or (ii) structured deposits incorporating a structure which makes it difficult for a client to understand the risk or return or the cost of exiting the product before term. ESMA is required to develop, by January 3, 2016, guidelines for the assessment of such instruments to help firms and national regulators classify correctly MiFID debt instruments and structured deposits as either complex or non-complex.

ESMA's consultation paper is available at: <http://www.esma.europa.eu/news/ESMA-consults-complex-debt-instruments-and-structured-deposits-MiFID-II?t=326&o=home>.

Technical Standards on the Assessment of the Proposed Acquisition of an Investment Firm under MiFID I and II

On March 27, 2015, ESMA published its final report and final draft technical standards on the assessment of acquisitions and increases in qualifying holdings in investment firms under MiFID I. The final draft technical standards comprise regulatory technical standards to establish an exhaustive list of information that an acquirer of an investment firm must provide to the relevant national regulator and implementing technical standards with standard forms, templates and procedures for cooperation and exchange of information between relevant national regulators. ESMA previously submitted draft RTS and ITS to the European Commission in December 2013. However, due to an amendment to legislation, those RTS need to be amended to cover information that the proposed acquirer must provide on the reputation and experience of any person who will direct the business of the investment firm after the proposed acquisition. The RTS and ITS published by ESMA on March 27, 2015 are the proposed revised RTS and ITS. Under MiFID II, which comes into effect on January 3, 2017, ESMA is required to prepare identical RTS and ITS and therefore ESMA considers that the revised RTS and ITS also satisfy its obligations under MiFID II.

ESMA final report is available at: <http://www.esma.europa.eu/content/Draft-technical-standards-under-Article-10a8-MiFID-assessment-acquisitions-and-increases-q-o>.

UK Government Consults on Transposing MiFID II

On March 27, 2015, HM Treasury published a consultation paper on its proposed transposition of MiFID II into UK law, including four draft statutory instruments. Member States are required to adopt measures transposing MiFID II by July 3, 2016 and to apply the provisions from January 3, 2017. In addition to the proposed statutory instruments, the FCA will also need to revise current rules and make new rules to transpose MiFID II. The proposed statutory instruments include provisions which create the position limit regime for commodity derivatives, make operating an organized trading facility a regulated activity, bring emission allowances, structured deposits and option and futures within the regulatory perimeter, provide for the exercise of the optional exemptions and transpose other exemptions and impose obligations on certain unauthorized firms in relation to algorithmic trading, provision of direct electronic access services and acting as a general clearing member of the CCP. The consultation closes on June 1, 2015. It is expected that the proposed legislation will be made in 2016.

The consultation page is available at: <https://www.gov.uk/government/consultations/transposition-of-the-markets-in-financial-instruments-directive-ii>.

Financial Conduct Authority's Initial Policy Options for Conduct of Business and Organizational Requirements under MiFID II

On March 26, 2015, the FCA published a discussion paper on its proposals for implementing the MiFID II conduct of business and organizational requirements. The paper sets out the policy choices available to the FCA in implementing some provisions of MiFID II including: (i) the application of MiFID II to insurance-based investment products and pensions; (ii) the best approach to implementing the extended application of MiFID II's investor protection requirements to the sale of and advice on structured deposits; (iii) whether a ban on discretionary investment management firms accepting commissions and other deposits is appropriate for retail client business; (iv) changing the criteria for local authorities' treatment as elective professional clients; (v) adopting the new requirements for independent advice on shares, bonds, derivatives and structured products; (vi) extending the MiFID II remuneration rules for conduct of business to non-MiFID firms; and (viii) amending the UK approach to recording telephone conversations and electronic communications. The FCA paper also highlights key conduct of business changes that firms will be required to comply with from January 3, 2017. In particular, the types of third party inducements that firms will be able to receive and the classification of products as either non-complex or complex, relevant to the determination of whether the appropriateness test must be applied, are discussed in the FCA paper. The FCA

consultation closes on May 26, 2015. The FCA intends to consult fully on implementing the MiFID II requirements in December 2015 and to publish its final rules in June 2016.

The FCA discussion paper is available at: <http://www.fca.org.uk/static/documents/discussion-papers/dp15-03.pdf> and an FCA implementation timetable is available at: <http://www.fca.org.uk/static/fca/documents/mifid-ii-timeline.pdf>.

Recovery & Resolution

US Agencies Announce Living Will Results for Three Foreign Banking Organizations

On March 23, 2015, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation announced the completion of reviews of annual resolution plans or “living wills” submitted in 2014 by three foreign banking organizations and gave feedback letters to each bank. The FBOs included BNP Paribas, HSBC Holdings plc and The Royal Bank of Scotland Group plc.

The FDIC announced that the living wills were “not credible” and that 2015 plans would be required to demonstrate significant progress. Common shortcomings identified across the FBOs included: (i) unrealistic assumptions about behavior of various parties (i.e., customers, counterparties, investors, or regulators); and (ii) insufficient analysis on the inter-connectedness between banks. The Federal Reserve Board and the FDIC will expect that the annual plans submitted by the three banks on or before December 31, 2015, demonstrate that the banks are making significant progress to address the shortcomings identified, and are taking actions to improve their resolvability under the US Bankruptcy Code.

The press release is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/20150323a.htm>.

US Agencies Adjust Resolution Plan Filing Deadline for Nonbank Financial Institutions

On March 26, 2015, the Federal Reserve Board and the FDIC permanently changed the annual resolution plan or “living will” deadline for four non-bank systemically important financial institutions (“non-bank SIFIs”) from July 1 to December 31 beginning in 2016. The institutions include American International Group, Inc., General Electric Capital Corporation, Inc., MetLife Inc., and Prudential Financial, Inc. The agencies previously temporarily extended the 2015 living will deadlines for American International Group, General Electric Capital Corporation, and Prudential Financial to December 31, 2015. MetLife, recently designated as systemically important, is required to submit its first resolution plan by December 31, 2016.

Resolution plans are required by the Dodd-Frank Wall-Street Reform and Consumer Protection Act for the largest financial institutions. Each living will must describe the company’s strategy for rapid and orderly resolution under the US Bankruptcy Code in the event of material financial distress or failure of the company.

The press release is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/20150326a.htm>.

Single Resolution Board Announces Priorities for 2015

On March 25, 2015, the Single Resolution Board announced its priorities for 2015 following its first plenary meeting. The SRB is part of the Single Resolution Mechanism in the Eurozone and will have the powers of a resolution authority under the Banking Recovery and Resolution Directive. The SRM is part of the Banking Union and therefore the SRB will only have powers over Eurozone banks or banks in those Member States that opt into the Banking Union. The SRB’s priorities in 2015 will be to (i) establish cooperation with key stakeholders and international partners; (ii) set standards for credible resolution plans; and (iii) focus on resolution planning, including at an international level, to address obstacles to resolution. The SRB will have full powers by 2016 to carry out its resolution powers.

The SRB announcement is available at: http://srb.europa.eu/docs/20150325-press-release_en.pdf.

People

Federal Reserve Bank of New York Appoints First Vice President

On March 27, 2015, the Federal Reserve Bank of New York appointed Michael Strine first Vice President, effective July 1, 2015. The appointment was approved by the Federal Reserve Board.

Events

April 2, 2015: The CFTC will hold a public meeting of the Market Risk Advisory Committee. The meeting agenda is available at: http://www.cftc.gov/About/CFTCCommittees/MarketRiskAdvisoryCommittee/mrac_agenda040215.

April 8, 2015: EBA public hearing on the IRB approach under CRD IV.

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. If you wish to receive more information on the topics covered in this publication, you may contact your usual Shearman & Sterling representative or any of the following:

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