



## 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.

Our European Governance & Securities Law Focus Newsletter is available [here](#).

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## Bank Prudential Regulation & Regulatory Capital

### Federal Deposit Insurance Corporation Seeks Comment on Potential New Deposit Account Records Requirements for Banks with a Large Number of Deposit Accounts

On April 21, 2015, the US Federal Deposit Insurance Corporation issued an advanced notice of proposed rulemaking (“ANPR”), seeking input on potential new recordkeeping standards for certain FDIC-insured institutions with more than two million deposit accounts. The FDIC is required to provide depositors with access to their insured accounts as soon as possible after an institution fails. For a bank with a large number of deposit accounts, payments might be delayed if the bank’s records are unclear or incomplete, making it difficult to determine what is insured and what is not. Generally, the FDIC seeks input on whether banks with a large number of deposit accounts should be required to have a greater responsibility in the deposit insurance determination process. Specifically, the FDIC seeks comment on whether banks should be required to meet certain records standards, including the ability to calculate insured and uninsured amounts for each depositor at the end of each business day. The FDIC also seeks input on what types of new data requirements would aid a quick and effective insurance determination process as well as the appropriate threshold for institutions to have to comply with the potential new requirements. The proposals will be open for comment for 90 days after the ANPR has been published in the Federal Register.

A statement issued by FDIC Director, Jeremiah O. Norton, in support of the ANPR is available at:

<https://www.fdic.gov/news/news/speeches/spapro814b.html> and the press release, including the ANPR, is available at: <https://www.fdic.gov/news/news/press/2015/pr15034.html>.

### Basel Committee Removes Selected National Discretions and Replies to Frequently Asked Question on Funding Valuation Adjustment

On April 21, 2015, the Basel Committee on Banking Supervision agreed to eliminate certain national discretions from the Basel II capital framework. The use of national discretions can hinder comparability across jurisdictions and increase variability in risk-weighted assets. The Basel Committee has agreed to remove national discretions from the Basel II capital framework regarding: (i) the treatment of past due loans; (ii) the definition of retail exposures; (iii) transitional arrangements for corporate, sovereign, bank and retail exposures; (iv) the rating structure standards for wholesale exposures; (v) internal and external audit; and (vi) re-ageing. The national discretion for the internal ratings-based approach treatment of equity exposures will expire in 2016. The Basel Committee intends to monitor national discretions that are still available and consider whether more of them should be removed.

The Basel Committee also responded to a frequently asked question on funding valuation adjustment (“FVA”). The FAQ notes that a bank’s adoption of FVA should not have the effect of offsetting or reducing its “own credit” adjustment. A bank should continue to derecognize its debit valuation adjustment in full, whether or not it has adopted a funding valuation-type adjustment.

The press release is available at: <http://www.bis.org/press/p150421.htm>.

## Derivatives

### Commodity Futures Trading Commission Issues No Action Letters for Erroneous Swap Trades and Swap Trade Confirmations

On April 22, 2015, the US Commodity Futures Trading Commission’s Division of Market Oversight and the Division of Clearing and Risk issued two no-action letters providing certain time-limited relief to swap execution facilities and

designated contract markets. CFTC Staff Letter 15-24 provides time-limited relief from certain CFTC regulations to permit SEFs and DCMs to correct clerical or operational errors that may cause a swap to be rejected for clearing and permits counterparties to resubmit the trade with the correct terms. The no-action letter also permits SEFs and DCMs to correct clerical or operational errors revealed after a swap has been cleared. It allows counterparties to execute a trade to offset the cleared trade and submit a new trade with the correct terms. The relief provided is set to expire on June 15, 2016.

CFTC Staff Letter 15-25 extends the time period for relief previously provided in No-Action Letter 14-108, from September 30, 2015 to March 31, 2016, with certain modifications. This Confirmation No-Action Letter provides relief to SEFs from certain requirements concerning trade confirmations required from SEFs for non-cleared swaps. Specifically, it provides relief to SEFs from the requirement to obtain documents that are incorporated by reference in a trade confirmation issued by a SEF, prior to issuing the confirmation. Additionally, the letter relieves SEFs from the requirement to preserve such documents as records.

CFTC Staff Letter 15-24 is available at:

<http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/15-24.pdf> and CFTC Staff Letter 15-25 is available at: <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/15-25.pdf>.

### **Commodity Futures Trading Commission Issues Guidance for Swap Execution Facilities on the Calculation of Projected Operating Costs**

On April 23, 2015, the CFTC's Division of Market Oversight issued guidance to SEFs concerning the calculation of projected operating costs for the purpose of complying with the financial resource requirements under SEF Core Principle 13 and CFTC Regulation 13.1303. This guidance follows two no-action letters providing relief for erroneous swap trades and swap trade confirmations issued on April 22, 2015. The guidance provides that the cost of variable commissions that a voice-based SEF might pay its employee-brokers does not need to be included in a SEF's calculation of projected operating costs. However, any fixed salaries or compensation payable to the SEF's employee-brokers must be included in the calculation of projected operating expenses.

The CFTC guidance to SEFs is available at:

<http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/15-26.pdf>.

## **Enforcement**

### **Merrill Lynch International Fined for Transaction Reporting Failures**

On April 22, 2015, the Financial Conduct Authority fined Merrill Lynch International £13,285,900 for failing to report, or to accurately report, transactions between November 2007 and November 2014. Transaction reporting is required to assist the FCA in monitoring the market and to provide information relating to investigations into market abuse, insider trading and market manipulation. In the final notice, the FCA notes that Merrill Lynch has since taken steps to ensure accurate reporting and to remediate the causes of the failings, including a review of internal systems and processes.

The final notice is available at: <http://www.fca.org.uk/static/documents/final-notices/merrill-lynch-international.pdf>.

### **US and UK Regulators and Authorities Fine Deutsche Bank \$2.5 Billion for Failings related to IBOR and LIBOR**

On April 23, 2015, US and UK regulators imposed fines on Deutsche Bank AG for failings related to EURIBOR and LIBOR (collectively known as IBOR) submissions. The CFTC imposed a financial penalty of \$800 million, the US Department of Justice imposed a financial penalty of \$775 million on DB Group Services (UK) Limited, a wholly-owned subsidiary of Deutsche Bank, which agreed to plead guilty to wire fraud for its role in manipulating LIBOR, the New York

Department of Financial Services imposed a fine of \$600 million and the UK FCA imposed a fine of £227 million (circa \$340 million). The FCA found that Deutsche Bank had breached several regulatory requirements by attempting to manipulate IBOR rates and improperly influence IBOR submissions and for failing to have proper systems and controls in place. The FCA also fined the bank for the failure by its Managers and Senior Managers to deal with it in an open and cooperative way, for misleading the FCA and for not responding to requests for information timeously and effectively.

The CFTC Order stated that from at least 2005 through early 2011, and across currencies, Deutsche Bank's submitters routinely took into account other Deutsche Bank traders' derivatives trading positions, as well as their own cash and derivatives trading positions, when making the bank's IBOR submissions. Furthermore, Deutsche Bank allowed submitters and traders to prioritize profit motives over appropriate submission considerations, permitted a culture of trader self-interest to exist and created conflicts of interest, which allowed the misconduct to occur.

The FCA notice is available at: <http://www.fca.org.uk/static/documents/final-notices/deutsche-bank-ag-2015.pdf>, the CFTC order is available at:

<http://www.cftc.gov/ucm/groups/public/@lrenforcementactions/documents/legalpleading/enfdeutscheorder042315.pdf>, the New York Department of Financial Services order is available at: <http://www.dfs.ny.gov/about/ea/ea150423.pdf> and the US Department of Justice press release, including the plea agreement entered into with DB Group Services UK Limited, is available at: <http://www.justice.gov/opa/pr/deutsche-banks-london-subsiary-agrees-plead-guilty-connection-long-running-manipulation>.

## Financial Services

### European Securities and Markets Authority Calls for Evidence on Virtual Currencies

On April 22, 2015, the European Securities and Markets Authority published a call for evidence on investment using virtual currency or distributed ledger technology. ESMA has been monitoring virtual currency investment to understand market developments, the potential benefits and risks for investors and potential issues for market integrity and financial stability. ESMA sets out its analysis in the paper and requests feedback on three particular topics: (i) virtual currency investment products, such as collective investment schemes or derivatives that have virtual currencies as an underlying or which invest in virtual currency businesses; (ii) virtual currency based assets, securities and asset transfers; and (iii) the application of distributed ledger technology to securities. ESMA is not proposing regulatory action at this stage but will continue to monitor investments using virtual currencies or distributed ledger technology to assist national regulators in keeping up to date with market developments. In July 2014, the European Banking Authority published an opinion proposing a potential regulatory regime for virtual currencies and advising national regulators to "discourage" financial institutions from buying, holding or selling them until a regulatory regime is in place.

The call for evidence is available at:

<http://www.esma.europa.eu/news/ESMA-seeking-information-new-developments-virtual-currency-investment?t=326&o=home>.

## MiFID II

### European Securities and Markets Authority Consults on Draft Guidelines on Knowledge and Competence under MiFID II

On April 23, 2015, ESMA launched a consultation on draft guidelines specifying the criteria for the assessment of the knowledge and competence of employees in investment firms that provide investment advice, information about

financial instruments, investment services or ancillary services to clients. Under the new Markets in Financial Instruments Directive II, investment firms will have to ensure and be able to demonstrate to national regulators that employees of the firm involved in such activities have the necessary knowledge and competence to provide such advice, to act in the best interests of the client and to act honestly, fairly and professionally. The draft guidelines will apply to investment firms and national regulators from January 3, 2017, the date that MiFID II comes into effect. Responses to the consultation are due by July 10, 2015. ESMA intends to publish its final report in Q4 2015.

The consultation paper is available at:

<http://www.esma.europa.eu/news/ESMA-consults-draft-guidelines-specifying-criteria-assessment-knowledge-and-competence-MiFID-II?t=326&o=home>.

## Recovery & Resolution

### Statement by Mark Carney Chairman of the Financial Stability Board to the International Monetary and Financial Committee

On April 22, 2015, the Financial Stability Board published a statement written by FSB Chairman Mark Carney to the International Monetary and Financial Committee. The statement contains information on ongoing work to finalize post-crisis reforms and measures being taken by the FSB to promote financial stability. The letter discusses certain financial vulnerabilities, such as diminished market liquidity, asset price discontinuities, financial institution misconduct and contagion across markets. The statement reports certain measures taken by the FSB to address these risks, including the formulation of a plan to identify financial stability risks associated with market liquidity in fixed-income markets and asset management activities, ending too-big-to fail for global systemically important banks and developing procedures for implementation monitoring of the agreed international financial regulatory reforms.

The statement is available at:

<http://www.financialstabilityboard.org/2015/04/statement-by-mark-carney-chairman-of-the-financial-stability-board-to-the-international-monetary-and-financial-committee-2/>.

## Upcoming Events

April 29, 2015: US House of Representatives Committee on Financial Services hearing entitled “Legislative Proposals to Enhance Capital Formation and Reduce Regulatory Burdens.”

April 29, 2015: US House of Representatives Committee on Financial Services hearing entitled “The Impact of International Regulatory Standards on the Competitiveness of U.S. Insurers.”

April 30, 2015: US Senate Committee on Banking, Housing and Urban Affairs hearing entitled “Examining Insurance Capital Rules and FSOC Process.”

May 1, 2015: US House of Representatives Committee on Financial Services hearing entitled “Oversight of the Financial Industry Regulatory Authority.”

May 8, 2015: EBA public hearing on its proposed regulatory technical standards on the detailed records to be kept by firms of financial contracts under the Banking Recovery & Resolution Directive.

May 8, 2015: EBA public hearing on its proposed guidelines on sound remuneration practices.

May 11, 2015: EBA public hearing on its proposed RTS on the content of Business Reorganization Plans and Progress Reports and proposed guidelines on the assessment of such plans.

May 13, 2015: US Securities and Exchange Commission Equity Market Structure Advisory Committee first meeting focusing on Rule 611 of SEC Regulation National Market System, also known as the “Order Protection Rule” or “Trade-through Rule.”

May 13, 2015: Financial Conduct Authority Prudential Supervision Forum.

May 18, 2015: EBA public hearing on its proposed guidelines for limiting exposures to shadow banking entities.

June 3, 2015: EBA workshop on application of proportionality principle in the EU banking supervisory framework.

June 3, 2015: Joint Committee of European Supervisory Authorities Third Consumer Protection Day 2015.

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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