



## 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

### US Federal Reserve Board Releases Semiannual Report on Banking Applications Activity

On April 30, 2015, the US Board of Governors of the Federal Reserve System released its Semiannual Report on Banking Applications Activity. The report delivers aggregate information on applications submitted by bank holding companies, state member banks, savings and loan holding companies, foreign banking organizations, and other entities and individuals for approval to undertake various transactions, including mergers and acquisitions, and engaging in new activities.

The latest report covers the period from July 1, 2014 to December 31, 2014. During that period, 681 proposals were reviewed, of which 629 were approved and 52 were withdrawn. Among other things, the report noted that merger and acquisition proposals are generally more complex than other proposals. The average and median number of days to approve such an application is 60 and 41 days, respectively, but the average number of days to approve an application that receives adverse public comments is 206 days.

The latest Semiannual Report on Banking Applications Activity is available at:

<http://www.federalreserve.gov/bankinfo/201504-semiannual-report-on-banking-applications-activity.pdf>.

### European Banking Authority Monitors Additional Tier 1 Capital Instruments

On May 4, 2015, the European Banking Authority published a report on the monitoring of Additional Tier 1 capital instruments issued by EU institutions. Under the EU Capital Requirements Regulation, the EBA must monitor the quality of own funds instruments issued by EU institutions. The report presents the EBA's recent monitoring results and updates the EBA's earlier report on the topic, published in October 2014. The EBA has examined fifteen AT1 issuances made between August 2013 and November 2014, five of which were made under a conversion mechanism and ten under a temporary write-down mechanism. The report states that certain provisions or wording of existing AT1 instruments should be avoided or revised so that uncertainty and complexity is minimized. Wording used should be consistent with that in the CRR, for example, "non-objection" cannot be used as a substitute for "supervisory permission," a term used in the CRR. The EBA intends to continue monitoring certain AT1 issuances, expects that future issuances will use some level of standardization, and advises that terms and conditions should not be unjustifiably complex. The EBA will also develop standardized terms and conditions for AT1 issuances. These would be non-compulsory for institutions, but would help to ensure compliance with regulatory provisions. The EBA report is not fully comprehensive and a final report will be published at the end of May 2015.

The report is available at: <http://www.eba.europa.eu/-/eba-updates-its-monitoring-of-additional-tier-1-capital-instruments>.

### European Banking Authority Consults on Mapping of Credit Assessments of External Credit Assessment Institutions for Securitization Positions

On May 7, 2015, the EBA published a consultation paper comprising draft Implementing Technical Standards on the mapping of credit assessments of External Credit Assessment Institutions for securitization positions under the CRR. The draft ITS aim to determine the mapping between credit ratings and credit quality steps for the allocation of risk weights to ECAIs' ratings issued on securitizations. Under the CRR, risk weights under the standardized and internal ratings based approach for securitization positions should be based on the credit quality of those positions established according to the credit ratings of ECAIs. The ITS aim to enhance regulatory harmonization across the EU allowing credit ratings of all registered credit rating agencies to be used for calculating institutions' capital requirements. Responses to the consultation are due by August 7, 2015.

The consultation paper is available at: <http://www.eba.europa.eu/documents/10180/1065442/EBA-CP-2015-08+CP+on+ITS+on+Mapping+of+ECAIs+Credit+Assessments.pdf>.

### **European Banking Authority Publishes New Taxonomy for Supervisory Reporting**

On May 8, 2015, the EBA published the new taxonomy for national regulators to provide data to the EBA under the supervisory reporting requirements set out in the Capital Requirements Directive. The revised taxonomy is for reporting on funding plans and supervisory benchmarking from December 31, 2014 onwards. The revised taxonomy incorporates corrections to funding plans and benchmarking reporting structures.

The EBA announcement is available at: <http://www.eba.europa.eu/-/eba-publishes-updated-dpm-and-xbrl-taxonomy-for-remittance-of-supervisory-reporting-of-funding-plans-and-supervisory-benchmarking>.

### **European Banking Authority Consults on Assignment of Risk Weights to Specialized Lending Exposures**

On May 11, 2015, the EBA published a consultation paper comprising draft Regulatory Technical Standards on the assignment of risk weights to specialized lending exposures under the CRR. Specialized lending exposures are exposures to entities created explicitly to finance or operate physical assets. The CRR allows for special treatment of these exposures within the internal model based approach using a set of supervisory risk weights made up of five categories. The proposed RTS aim to determine how banks take into account certain factors, such as financial strength, political and legal environment and transaction characteristics, when assigning risk weight to specialized lending exposures. The draft RTS also specify how banks should combine those factors to determine the final assignment to a certain category. Responses to the consultation are due by August 11, 2015.

The consultation paper is available at: <http://www.eba.europa.eu/documents/10180/1068081/EBA-CP-2015-09+CP+on+Assigning+RWs+to+Specialised+Lending+Exposures.pdf>.

## **Credit Ratings**

### **International Organization of Securities Commissions Consults on Sound Practices for Large Intermediaries**

On May 7, 2015, the International Organization of Securities Commissions published a consultation on sound practices at large intermediaries, discussing alternatives to the use of credit ratings in assessing creditworthiness. The report lists thirteen draft practices to be considered by large market intermediaries when developing internal credit assessment policies. These aim to encourage the implementation of efficient alternative methods to assess creditworthiness and reduce the overreliance on credit rating agencies. These draft practices are to be considered also by regulators when overseeing market intermediaries. The draft sound practices include: (i) establishing independent credit assessment functions separate from other business units; (ii) incorporating diverse qualitative and quantitative measures into robust assessment processes; and (iii) improving credit risk assessment practices to ensure that firms remain well informed on the latest developments that might have an adverse effect on the firm. A final report will be prepared after responses to the consultation have been considered. Responses to the consultation are due by July 8, 2015.

The consultation is available at: <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD486.pdf>.

## **Derivatives**

### **US and EU Issue Joint Statement on CCP Equivalence Decision**

On May 7, 2015, the European Commission and US Commodity Futures Trading Commission published a statement made jointly by Jonathan Hill, European Commissioner for Financial Stability, Financial Services and Capital Markets Union, and Timothy Massad, CFTC Chairman. Mr Massad and Commissioner Hill discussed a possible European Commission equivalence decision for CCPs regulated and supervised by the CFTC, and the statement reveals that discussions will continue so that an approach may be finalized by summer 2015.

The statement is available at: [http://europa.eu/rapid/press-release\\_STATEMENT-15-4944\\_en.htm?locale=en](http://europa.eu/rapid/press-release_STATEMENT-15-4944_en.htm?locale=en).

## Financial Market Infrastructure

### US Securities and Exchange Commission Approves Pilot to Assess Tick Size Impact for Smaller Companies

On May 6, 2015, the US Securities and Exchange Commission approved a proposal by the national securities exchanges and the US Financial Industry Regulatory Authority regarding a two-year pilot program widening the minimum quoting and trading increments, known as “tick sizes” for stocks of some small firms. The pilot program aims to assess whether wider tick sizes would improve the quality of small company stocks for issuers and investors.

The SEC press release is available at: <http://www.sec.gov/news/pressrelease/2015-82.html>.

### European Parliament and Council Agree on New Draft Payment Services Directive

On May 5, 2015, the Council of the European Union issued a press release stating it had reached a tentative agreement with the European Parliament on a draft directive that would further the development of electronic payments in the EU market. The new directive will incorporate and repeal the existing Payment Services Directive to create a new framework for emerging and innovative payment services, including internet and mobile payments, providing a more secure and harmonized environment for payments. Once the full text is finalized, the draft directive will need to be confirmed by the Council, submitted to the European Parliament for a vote and then to the Council for adoption. Once adopted, member states will have two years to transpose the directive into national law.

The press release is available at: <http://www.consilium.europa.eu/en/press/press-releases/2015/05/05-payment-services-agreement-on-new-rules/>.

### TARGET2-Securities Group of European Central Bank Publishes Impact Analysis on T2S Harmonization Standards Non-Compliance

On May 5, 2015, the TARGET2-Securities advisory group of the European Central Bank published an impact analysis report on non-compliance with T2S harmonization standards. The standards aim to provide a single centralized platform for securities settlement in central bank funds across European securities markets. In November 2014, six jurisdictions declared that it would not be likely that they would be able to comply with some of the obligatory harmonization standards by the time their markets plan to migrate to T2S. These jurisdictions are Belgium, France, Germany, the Netherlands, Romania and Switzerland. The report states that there have been no new cases of non-compliance with T2S harmonization standards. The T2S group has assessed the impact of non-compliant T2S markets on the T2S community as a whole. For the Belgian, Dutch, French, Romanian and Swiss markets, the impact of non-compliance is deemed to be manageable and the T2S group has asked for the further monitoring of implementation plans. A decision for the German market has been postponed until the next impact analysis.

The impact analysis is available at:

[http://www.ecb.europa.eu/paym/t2s/progress/pdf/ag/20150428\\_ag\\_impact\\_analysis\\_report\\_of\\_non\\_compliance\\_with\\_t2s\\_harmonisation\\_standards\\_v.2.0.pdf?db9a61812e8e8cce8300f99552b2130d](http://www.ecb.europa.eu/paym/t2s/progress/pdf/ag/20150428_ag_impact_analysis_report_of_non_compliance_with_t2s_harmonisation_standards_v.2.0.pdf?db9a61812e8e8cce8300f99552b2130d).

### Bank of England Publishes Consolidated Version of Rules for Recognized Clearing Houses

On May 8, 2015, the Bank of England published a consolidated version of its rules for Recognized Clearing Houses. RCHs are regulated by the Financial Services and Markets Act 2000 and are subject to the FSMA 2000 (Recognition Requirements) Regulations 2001, though different recognition requirements will apply under the European Market Infrastructure Regulation for RCHs that are also CCPs. RCHs that are also CCPs must comply with domestic requirements as well as EMIR. All UK RCHs must comply with the BoE rules.

The BoE RCH rules are available at: <http://www.bankofengland.co.uk/financialstability/Pages/fmis/standards/rchreq.aspx>.

## Financial Services

### Federal Reserve Bank of New York Creates Wholesale Product Office

On May 8, 2015, the Federal Reserve Bank of New York announced the creation of a new group called the Wholesale Product Office. The WPO, currently a function within the Federal Reserve Bank of New York's Executive Office, manages the Fedwire Funds, Fedwire Securities, and the National Settlement Service. Richard P. Dzina will serve as the head of the WPO as of July 1, 2015, as well as a member of the Federal Reserve Bank of New York's Management Committee.

The press release is available at: <http://www.ny.frb.org/newsevents/news/aboutthefed/2015/oa150508.html>.

### New York State Department of Financial Services Grants First Charter to a New York Virtual Currency Company

On May 7, 2015, the New York State Department of Financial Services announced that it has granted a charter under the New York Banking Law to itBit Trust Company, LLC – a commercial Bitcoin exchange based in New York City. The announcement establishes ItBit as the first virtual currency company to receive a charter from the NYDFS.

This announcement caps a series of announcements from the NYDFS, outlining and establishing regulatory guidelines for virtual currencies. Most recently, in December 2014, the NYDFS released a framework for licensing virtual currency firms, known as the "BitLicense framework." The BitLicense framework included consumer protection, anti-money laundering compliance and cyber security rules tailored for virtual currency firms, including the creation of a two-year transitional BitLicense to assist startups. The additional comment period for the revised BitLicense framework ended in March 2015 and NYDFS expects to put forward its final regulatory framework later this month.

The press release is available at: <http://www.dfs.ny.gov/about/press2015/pr1505071.htm>.

## MiFID II

### European Securities and Markets Authority Publishes Final Guidelines on the Commodity Derivatives Definition under Markets in Financial Instruments Directive

On May 6, 2015, the European Securities and Markets Authority published its guidelines on the application of the definition of commodity derivatives under the Markets in Financial Instruments Directive (known as MiFID I). The guidelines aim to provide a common, uniform and consistent application of the definition of commodity derivatives. There is no commonly adopted definition of derivatives in the EU under MiFID I, which can result in the inconsistent application of EMIR when it refers to the MiFID commodity derivatives definition. The guidelines also aim to ensure continuity when MiFID II replaces MiFID I from January 3, 2017. The guidelines will apply from August 7, 2015.

The guidelines are available at: [http://www.esma.europa.eu/system/files/2015-05-06\\_final\\_guidelines\\_c6\\_and\\_7.pdf](http://www.esma.europa.eu/system/files/2015-05-06_final_guidelines_c6_and_7.pdf).

## Recovery & Resolution

### European Banking Authority Publishes Final Guidelines on Recovery Plan Indicators

On May 6, 2015, the EBA published its final report on guidelines on the minimum list of qualitative and quantitative recovery plan indicators, including the final guidelines. Under the Banking Recovery and Resolution Directive, banks and certain investment firms are required to prepare recovery plans setting out the measures that a firm would take to restore its financial position. Recovery plans are required to include a set of indicators which identify when any of the measures included in the recovery plan are to be invoked. The final guidelines, which should be read in conjunction with the guidelines on the range of scenarios to test recovery scenarios, must be agreed by the national regulator charged with approving the overall recovery plan of a firm. The final guidelines specify that each recovery plan must include capital, liquidity, profitability and asset quality recovery plan indicators. Market-based indicators and macroeconomic indicators must also be included in a recovery plan unless the national regulator agrees that such indicator/s is not relevant to the firm's legal structure, risk profile, size and complexity. For

each category of indicators, the guidelines set out the specific indicators to be included. The guidelines are a minimum list of indicators and firms should not limit their indicators to that minimum. The guidelines will apply from July 31, 2015 to banks and investment firms subject to the BRRD and to national regulators.

The guidelines are available at: <http://www.eba.europa.eu/-/eba-issues-final-guidance-on-recovery-indicators>.

### **European Banking Authority Publishes Final Guidelines on Triggers for Early Intervention Powers**

On May 8, 2015, the EBA published its final report on guidelines on triggers for the use of early intervention powers under the BRRD. The final guidelines provide national regulators with guidance on when to apply early intervention measures to firms. National regulators are not obliged to apply the triggers automatically and may even apply the measures when the triggers are not met. The guidelines identify the following triggers: (i) overall Supervisory Review and Evaluation Process score and outcome, expanding on when regulators should consider application of the early intervention measures; (ii) material changes or anomalies identified in the monitoring of key financial and non-financial indicators under SREP; and (iii) significant events indicating that the conditions for early intervention are met. The final guidelines will apply from January 1, 2016.

The guidelines are available at: <http://www.eba.europa.eu/-/eba-publishes-its-final-guidelines-on-triggers-for-the-use-of-early-intervention-measures>.

## **People**

### **David Grim Named Director of the US Securities and Exchange Commission's Division of Investment Management**

On May 8, 2015, the SEC announced that David Grim will serve as the new Director of the Division of Investment Management. Mr. Grim has been the acting director of the Division of Investment Management since February 2015.

The SEC press release is available at: <http://www.sec.gov/news/pressrelease/2015-83.html>.

### **Jeremiah O. Norton Submits Resignation as Director of the US Federal Deposit Insurance Corporation**

On May 8, 2015, Jeremiah O. Norton submitted his resignation as Director of the US Federal Deposit Insurance Corporation. Mr. Norton has served as Director of the FDIC since April 16, 2012. His resignation will become effective on June 5, 2015.

The press release is available at: <https://www.fdic.gov/news/news/press/2015/pr15039.html>.

## **Upcoming Events**

May 14, 2015: CFTC Global Markets Advisory Committee public meeting to discuss issues related to assessing clearinghouse safeguards and the CFTC proposal on the cross-border application of margin requirements for uncleared swaps.

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

May 18, 2015: EBA public hearing on the Additional Tier 1 capital instruments report.

May 18, 2015: FCA roundtable with cloud service providers on regulated firms procuring cloud services and compliance with FCA rules on outsourcing.

May 29, 2015: European Commission public hearing on the revision of EMIR.

June 2, 2015: CFTC Market Risk Advisory Committee public meeting.

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.

June 8, 2015: European Commission public hearing on next steps to build a Capital Markets Union.

June 11, 2015: EBA public hearing on draft ITS on the mapping of External Credit Assessment Institutions' for securitization positions.

June 17 and 18, 2015: International Organization of Securities Commissions Annual Conference.

July 6, 2015: EBA public hearing on assigning risk weights to specialized lending exposures.

July 16 and 29, 2015: SEC outreach programs to aid firms in compliance with Regulation Systems Compliance and Integrity.

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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