



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

US Board of Governors of the Federal Reserve System Approves Final Rule Amending Regulation D

On June 18, 2015, the Board of Governors of the Federal Reserve System adopted a final rule amending Regulation D (Reserve Requirements of Depository Institutions), changing the calculation of interest payments on certain balances maintained by eligible institutions at Federal Reserve Banks. In contrast to the previous rule, which based interest payments on the average rate over the two-week reserve maintenance period, the final rule bases interest payments on a daily rate. The amendment is intended to enhance the effectiveness of changes in such rates of interest in moving the Federal funds rate into the target range established by the Federal Open Market Committee, especially when changes in those rates do not coincide with the beginning of a maintenance period. The amendments to Regulation D will be effective July 23, 2015.

The text of the amended Regulation D is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20150618a1.pdf>.

US Federal Banking Agencies Finalize Revisions to the Capital Rules Applicable to Advanced Approaches Banking Organizations

On June 16, 2015, the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency issued final revisions to the regulatory capital rules adopted in July 2013. The final rule is applicable to large, international banking organizations that calculate their regulatory capital ratios using the advanced approaches rule (generally, institutions with more than \$250 billion in total consolidated assets or more than \$10 billion in total on-balance sheet foreign exposures). The final rule substantially adopts the changes to the rule as proposed on December 18, 2014, and corrects and updates certain aspects of the advanced approaches rule, including the calculation requirements for risk-weighted assets for banking organizations using the advanced approaches method. The revisions also enhance the consistency of the advanced approaches rule with international capital standards. The final rule will be effective October 1, 2015.

The text of the final rule is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20150616a1.pdf>.

US Federal Deposit Insurance Corporation Proposes Rule to Revise Deposit Insurance Assessments for Small Banks

On June 16, 2015, the FDIC proposed an amendment to the methods used by the FDIC in assessing small banks for deposit insurance. Under the proposal, only banks with less than \$10 billion in assets that have been insured by the FDIC for at least five years would be affected. Specifically, the FDIC will (i) revise the financial ratios method to be based on a statistical model estimating the probability of failure over three years; (ii) update the financial measures used in the financial ratios method to be consistent with the statistical model; and (iii) eliminate risk categories for established small banks and use the financial ratios method to determine assessment rates for all such banks. As the proposal seeks to be revenue neutral, the aggregate assessment revenue collected from small banks affected by the revisions is expected to remain approximately the same as it would have been otherwise. To assist banks in understanding the potential effect of the proposed rule and in estimating assessment rates under the proposal, the FDIC has published an online assessment calculator. Comments on the proposal are due within 60 days from publication of the proposed rule in the Federal Register.

The text of the notice of proposed rulemaking is available at: https://www.fdic.gov/news/board/2015/2015-06-16_notice_dis_a_fr.pdf and the proposed assessment calculator is available at: <https://www.fdic.gov/deposit/insurance/calculator.html>.

The text of the statement by FDIC Chairman Martin J. Gruenberg regarding the proposed rule is available at: <https://www.fdic.gov/news/news/speeches/spjune1615.html>.

US Federal Reserve Board Releases Statement on Court's Decision in *Starr International Company, Inc. v. The United States*

On June 15, 2015, the Federal Reserve Board issued a public statement regarding AIG and the recently issued United States Court of Federal Claims decision in *Starr International Company, Inc. v. The United States*. In its statement, the Federal Reserve Board stated that its actions during the bailout of AIG during the financial crisis were “legal, proper and effective.” In the decision, the United States Court of Federal Claims found in favor of Starr International Company, Inc. on a portion of its claim against the United States under the Fifth Amendment, but ultimately did not award any damages. The opinion strongly criticized many of the US government’s actions with respect to the assistance it provided AIG in 2008 and the years following. Ultimately, the Court held that no damages were available to the shareholders, because they were in fact in a better position than they would have been had the US government not intervened and AIG had filed for bankruptcy.

The Federal Reserve Board press release is available at: <http://www.federalreserve.gov/newsevents/press/other/20150615a.htm>.

EBA Final Draft Implementing Technical Standards on Disclosure and Supervisory Reporting of Leverage Ratio

On June 15, 2015, the European Banking Authority published two final draft Implementing Technical Standards under the Capital Requirements Regulation on the leverage ratio for EU firms with regards to disclosure and supervisory reporting. These include amendments and updates to templates used for supervisory reporting and instructions to update the leverage ratio disclosure and reporting framework. The final draft ITS on reporting aim to encourage the harmonization of reporting and disclosure of the leverage ratio across the European Union, as consistent reporting requirements in all member states facilitate the comparability of data as well as cross-border supervision. The final draft ITS will enter into force following their publication in the Official Journal of the European Union.

The final draft ITS are available at: <http://www.eba.europa.eu/documents/10180/1113844/EBA-ITS-2015-03+Final+Draft+ITS+amending+ITS+on+LR+Reporting.pdf>; and <http://www.eba.europa.eu/documents/10180/717567/EBA-ITS-2014-04-rev1+%28Final+Draft+ITS+amending+ITS+on+LR+Disclosure%29.pdf>

EU Technical Standards on Own Funds Requirements Amended

On June 17, 2015, a regulation which amends the regulatory technical standards for own funds requirements was published in the Official Journal of the European Union. The amending regulation aims to ensure a harmonized approach across the EU to the deduction from own funds items of indirect and synthetic holdings in firms' own funds instruments and indirect and synthetic holdings in financial sector entities. The amending regulation adds provisions to the original RTS which: (i) explain what intermediate entities mean for the purpose of deducting holdings in financial sector entities held indirectly through intermediate entities; (ii) expand upon the different investments which should be considered as synthetic holdings and the amount to be deducted from Common Equity Tier 1 items in each case; (iii) set out the calculation for firms to determine the percentage held indirectly in a financial sector entity; (iv) include criteria required for indices to be qualify as broad market indices; and (v) explain the calculation of minority interests. The amending regulation enters into force on July 7, 2015.

The amending regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.150.01.0001.01.ENG.

EU Technical Standards on Extensions and Changes to Internal Approaches Consolidated

On June 19, 2015, a regulation amending the RTS on assessing the materiality of extensions and changes of internal approaches when calculating own funds requirements for market risk was published in the Official Journal of the European Union. The amending regulation adds standards to the original RTS on the conditions for assessing materiality of extensions and changes to Internal Model approaches used for the calculation of own funds requirements for market risk. The amendments mean that all of the provisions regulating extensions and changes to internal approaches are set out in a single legal text. The original RTS only

included provisions for the Internal Rating Based Approach and the Advanced Measurement Approaches used for calculating capital requirements for credit and operational risk. The amending regulation enters into force on July 9, 2015.

The amending regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.154.01.0001.01.ENG.

Basel Committee Releases Final Net Stable Funding Ratio Disclosure Standards

On June 22, 2015, the Basel Committee on Banking Supervision released final Net Stable Funding Ratio disclosure standards. The NSFR was introduced by the Basel Committee to reduce funding risk over a period of one year by requiring banks to fund their activities with sufficiently stable sources to mitigate the risk of future funding stress. The NSFR and the Liquidity Coverage Ratio are intended to increase a bank's resilience to liquidity shocks, ensure more stable funding and enhance liquidity risk management. Similar to the LCR disclosure framework, the goal of the NSFR disclosure standards is to improve transparency of funding requirements and reduce uncertainty in the markets as the NSFR is implemented. The NSFR disclosure requirements are applicable to internationally active banks on a consolidated basis although jurisdictions may choose to apply the requirements to other banks. Banks will be required to publish their NSFR disclosures at the same time as they publish their financial statements, either within those statements or linked to their websites. Banks will also need to make archived disclosures publicly available on their websites for a retention period to be determined by national regulators. The NSFR disclosure requirements will be adopted in parallel to the NSFR and banks will be required to comply with the new disclosure requirements from the date of the first reporting period after January 1, 2018.

The press release is available at: <http://www.bis.org/press/p150622.htm> and the final standards are available at: <http://www.bis.org/bcbs/publ/d324.pdf>.

Derivatives

US Commodity Futures Trading Commission Updates Guidebook and Appendices for Part 20 Reports

On June 22, 2015, the US Commodity Futures Trading Commission's Division of Market Oversight published an updated Guidebook and Appendices for Part 20 Reports, providing guidance and instructions for the submission of large swaps trader reports to the CFTC in accordance with Part 20 of the CFTC regulations. Among other things, the Part 20 Guidebook includes instructions on reporting formats and record layouts for submitting position reports and examples for converting swaps into futures equivalent units as required under Part 20.

The CFTC Guidebook for Part 20 Reports is available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/ltrguidebook062215.pdf>.

Enforcement

OCC Announces Plans to Escheat Funds from the Foreclosure Review, the Termination of Orders against Certain Mortgage Servicers and the Imposition of Restrictions on Six Other Mortgage Servicers

On June 17, 2015, the OCC announced its intention to escheat at the end of 2015 any remaining uncashed payments made pursuant to the Independent Foreclosure Review Payment Agreement. According to OCC estimates, approximately \$280 million from OCC-supervised institutions will remain unclaimed at the end of 2015 despite efforts to locate eligible borrowers. The decision to escheat all funds available from uncashed checks provides an opportunity for the remaining eligible borrowers and their heirs to claim the funds through their states' escheatment claims processes. Concurrently with the decision, the OCC terminated foreclosure-related consent orders against three national bank mortgage servicers (Bank of America, N.A., Citibank N.A., and PNC Bank, N.A.) that the OCC deemed to have met the consent order requirements, and imposed business restrictions

on six banks that have not completed the required corrective actions. The restrictions issued by the OCC include limitations on the acquisition of residential mortgage servicing or residential mortgage servicing rights; new contracts for the bank to perform residential mortgage servicing for other parties; outsourcing or sub-servicing of new residential mortgage servicing activities to other parties; off-shoring new residential mortgage servicing activities; and new appointments of senior officials responsible for residential mortgage servicing or residential mortgage servicing risk management and compliance. The specific restrictions imposed on the banks vary based on the particular circumstance of each bank.

The OCC press release is available at: <http://www.occ.gov/news-issuances/news-releases/2015/nr-occ-2015-85.html>.

Report on Credible Deterrence in the Enforcement of Securities Regulation

On June 17, 2015, the International Organization of Securities Commissions published a report on credible deterrence in the enforcement of securities regulation. With the objective of promoting awareness of deterrence, the report sets out the following as factors that may lead to credible deterrence of misconduct in the securities and investment markets if adopted by regulators: (i) legal certainty of the consequence of misconduct; (ii) detecting misconduct by being well connected and getting the right information; (iii) co-operation and collaboration between regulatory authorities; (iv) bold and resolute enforcement in investigations and prosecution of misconduct; (v) strong punishments which ensure that there is no profit from misconduct; (vi) promoting public understanding; and (vii) good regulatory governance.

The report is available at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD490.pdf>.

Financial Market Infrastructure

Delay on Delivery of European Technical Standards under Central Securities Depositories Regulation

On June 18, 2015, the European Securities and Markets Authority published a letter, dated June 17, 2015, from it to the European Commission that informs the Commission that ESMA will be providing the technical standards due under the Central Securities Depositories Regulation in September 2015. The original due date for delivery of the technical standards was June 18, 2015. The delay to delivery of the standards is due to the Commission's Legal Services undertaking an early review of the standards to ensure conformity and consistency of EU legislation. There is not expected to be a delay in adoption by the European Commission of the technical standards under CSDR. The CSDR introduces common standards for settlements across the EU, such as the harmonization of the rules governing central securities depositories which operate the infrastructures enabling settlement, and the timing of securities settlement in the EU. The CSDR will apply directly across the EU from January 1, 2023 to transferable securities issued after that date and from January 1, 2025 to all transferable securities. Certain provisions will only apply from the date of entry into force of the relevant delegated act adopted by the Commission under the CSD Regulation.

ESMA's letter is available at: <http://www.esma.europa.eu/news/ESMA-asks-Commission-delay-CSDR-technical-standards?t=326&o=home>.

FCA Call for Input on Innovation in Digital and Mobile Solutions in Financial Services

On June 17, 2015, the Financial Conduct Authority issued a call for input, asking two specific questions on digital and mobile solutions for financial services, so that it may obtain market views on: (i) specific UK or EU rules and policies that may currently restrict the development of new and innovative products; and (ii) rules and policies that should be introduced to facilitate innovation in this field. The FCA is asking for specific examples, taking into account both UK and EU perspectives. The call for input also provides a summary on the FCA's considerations related to the digital and mobile space to date, such as the demand for the regulation of digital currencies and concerns about regulatory requirements creating lengthy customer terms and conditions that are deemed not to be appropriate for digital and mobile solutions. Responses to the Call for input are due by September 7, 2015.

The call for input is available at: <http://www.fca.org.uk/your-fca/documents/call-for-input-regulatory-barriers-to-innovation-in-digital-and-mobile-solutions->.

Financial Services

International Organization for Securities Commissions Issues Press Release Further to Annual Conference

On June 17, 2015, IOSCO issued a press release further to its recent annual conference, reporting that important organization and policy issues have been discussed, including IOSCO's strategic direction to 2020 as well as its action plans. IOSCO aims to reinforce its position as a global reference for securities regulation and aims to implement 43 new initiatives encompassing six priority areas: (i) research and risk identification; (ii) standard setting and developing guidance; (iii) implementation monitoring; (iv) capacity building; (v) co-operation and information exchange; and (vi) collaboration and engagement with other international organizations.

The press release is available at: <http://www.iosco.org/news/pdf/IOSCONEWS384.pdf>.

Shadow Banking

EU Political Agreement on Proposed Regulation on Reporting and Transparency of Securities Financing Transactions

On June 17, 2015, the Council of the European Union and the European Parliament announced that they had reached agreement on the text of the proposed Regulation on Reporting and Transparency of Securities Financing Transactions, known as SFTR. The aim of the SFTR is to improve the transparency of securities lending, repurchase transactions, reverse repurchase transactions, buy-sell back or sell-buy back transactions and margin lending transactions which will help reduce the likelihood of banks seeking to avoid rules applicable to them by moving certain of their activities to the shadow banking sector. The SFTR, once finalized, will require: (i) all securities financing transactions, subject to certain exceptions for central banks and similar bodies, to be reported to EU recognized trade repositories; (ii) investment funds to disclose their use of SFTs to investors in regular reports and pre-investment documents; and (iii) minimum conditions to be met on the reuse of collateral, such as disclosure of risks and the need to obtain prior consent. The politically agreed SFTR must be technically finalized before the official legal text can be adopted by the European Parliament, which is currently scheduled for October 2015.

The European Council's press release is available at: <http://www.consilium.europa.eu/en/press/press-releases/2015/06/17-ecofin-transparency-securities-financing-transactions/> and the European Parliament's is available at: http://www.europarl.europa.eu/pdfs/news/expert/infopress/20150617IPR67310/20150617IPR67310_en.pdf.

People

US Federal Reserve Board Announces New Deputy Director of Division of Monetary Affairs

On June 19, 2015, the Federal Reserve Board announced that Brian F. Madigan will become the new secretary of the Federal Open Market Committee and deputy director of the Federal Reserve Board's Division of Monetary Affairs.

The Federal Reserve Board press release is available at: <http://www.federalreserve.gov/newsevents/press/other/20150619a.htm>.

Upcoming Events

June 24, 2015: US House of Representatives Committee on Financial Services hearing entitled "Evaluating the Security of the US Financial Sector."

June 26, 2015: EBA public hearing on its draft report on qualifying securitization.

July 2, 2015: EBA public hearing on methodologies for the valuation of derivative liabilities.

July 3, 2015: EBA workshop on proportionality measures for regulatory purposes.

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

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

July 20, 2015: FCA Senior Managers and Certification Regime briefing for professional advisers.

July 22, 2015: FCA Annual Public Meeting 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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