



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 Announces Approval of Applications by M&T Bank Corporation to Acquire Hudson City Bancorp, Inc.

On September 30, 2015, the US Board of Governors of the Federal Reserve System announced its approval of the applications by: (i) M&T Bank Corporation to acquire Hudson City Bancorp, Inc.; and (ii) by M&T's subsidiary bank, Manufacturers and Traders Trust Company, to merge with Hudson City Savings Bank. Upon consummation of the transactions, M&T will have consolidated assets of approximately \$132.5 billion, making it the 25th largest insured depository organization in the United States (currently it is 31st). M&T agreed to purchase Hudson City and submitted applications to the Federal Reserve Board in respect of the transaction in 2012. However, the Federal Reserve Board initially identified weaknesses in M&T's risk management program, including issues in M&T's Bank Secrecy Act/anti-money laundering compliance management program and its consumer compliance program and thus postponed consideration of the deal at M&T's request until M&T was able to remediate these concerns.

The Federal Reserve Board press release and order are available at:

<http://www.federalreserve.gov/newsevents/press/orders/20150930a.htm>.

The Federal Reserve Board order is available at:

<http://www.federalreserve.gov/newsevents/press/orders/orders20150930a1.pdf>.

European Banking Authority Publishes Report Analyzing Asset Encumbrance for EU banks

On September 30, 2015, the European Banking Authority published its first analysis on asset encumbrance for EU banks, using data received from the 200 banks that provide it with such data. This first analysis initiates the regular monitoring of levels of asset encumbrance at EU level and future reports will be published annually. The analysis aims to assist supervisors in assessing how banks manage funding stress as well as the impact that switching from unsecured to secured funding might have on banks in conditions of stress. The report is based on data received for December 2014 and March 2015 further to a requirement under the Capital Requirements Regulation for banks to report levels of repurchase agreements, securities lending and all forms of asset encumbrance to national regulators. The analysis shows that the overall weighted average encumbrance ratio was 27% in March 2015, with ratios at country level that range from 0% for Estonia and 44% in Denmark and Greece. The report shows there has been no increase in levels of asset encumbrance over the past four years, based on a comparison with a similar report released by the European Systemic Risk Board in 2011.

The report is available at: <http://www.eba.europa.eu/documents/10180/974844/EBA+Report+on+Asset+Encumbrance+September+2015.pdf>.

European Commission Publishes Proposed Legislative Package to Revive EU Securitization Markets

On September 30, 2015, the European Commission published two proposed Regulations as part of its Capital Markets Union initiative which aim to revive the EU securitization markets. The proposed Regulation on common rules on securitization and creating a European framework for simple, transparent and standardized securitization (referred to as STS Securitization) sets out the eligibility criteria for STS securitizations such as risk retention rules, due diligence and disclosure requirements. The proposed Regulation also includes requirements for supervisory requirements, amendments to other EU legislation to ensure consistency, an exemption, subject to certain criteria being met, from the clearing obligation for OTC derivative contracts entered into by covered bond entities and securitization special purpose entities and rules on third country securitizations. The second proposed Regulation would amend the CRR to revise capital requirements for banks and investment firms originating, sponsoring or investing in securitizations. The objective of the proposals is to align the CRR provisions with the revised Basel framework of 2014 as was recommended by the EBA in its report on qualifying securitizations in July. The proposed revisions to the CRR seek to

adopt a more risk-sensitive approach to STS Securitization which is currently in the early stages of development at international level. Both legislative proposals are subject to the European legislative process.

The proposed STS Securitization Regulation is available at:

http://ec.europa.eu/finance/securities/docs/securitisation/com-2015-472_en.pdf.

Basel Committee on Banking Supervision Issues Report on Regulatory Consistency of Risk-weighted Assets for Counterparty Credit Risk

On October 1, 2015, the Basel Committee on Banking Supervision published a report relating to the regulatory consistency of Risk-Weighted Assets for counterparty credit risk. This report is part of the BCBS's wider Regulatory Consistency Assessment Program, which is intended to ensure consistent implementation of the Basel III framework. The report examines variability in banks' modeling of derivatives, specifically exposure modeling, by presenting findings from a hypothetical test portfolio exercise. The report concentrates on the internal models method and the advanced credit valuation adjustments risk capital charge for OTC derivative trades. This report completes the BCBS's review, in respect of trading-related internal models, and follows two earlier exercises that focused on market risk RWAs that were published in January 2013 and December 2013. In the report, the BCBS presents key findings, lists a number of observed good practices, and highlights areas where banks and supervisors may seek to harmonize practices to reduce variability in outcomes.

The report is available at: <http://www.bis.org/bcbs/publ/d337.pdf>.

Bank of England Announces Publication Date for Results of 2015 Stress Test

On September 28, 2015, the Bank of England announced the timetable for publication of the results of the 2015 UK stress test, which aims to evaluate the resilience of the UK banking system. The stress test covers seven major UK banks and building societies, namely Barclays, HSBC, Lloyds Banking Group, Nationwide, Royal Bank of Scotland, Santander UK, and Standard Chartered. The Financial Policy Committee and Board of the Prudential Regulation Authority will make their final decisions on the results of the stress tests on November 30, 2015 and will revert to the relevant firms on the same day. The results will then be published on December 1, 2015.

The press release is available at: <http://www.bankofengland.co.uk/publications/Documents/news/2015/072.pdf>.

UK Regulator Publishes Supervisory Statement on Reports Provided by Skilled Persons

On September 30, 2015, the PRA published an updated Supervisory Statement on reports provided by skilled persons under the Financial Services and Markets Act 2000. Under FSMA, the PRA may appoint, or may require a firm or a certain individual to appoint a skilled person to provide the PRA with a report giving an independent view of a firm's activity. This is part of the PRA's supervisory approach to firms, to identify, assess or prevent risks, track the development of previously identified risks or to use as part of possible remedial measures. The Supervisory Statement is to be read alongside the Use of Skilled Persons Part of the PRA Rulebook, which specifies the rules on contracts entered into with skilled persons. The updated Supervisory Statement provides greater clarity on the use of a skilled person as part of the PRA's supervisory approach and in particular as a discretionary supervisory tool. The Supervisory Statement includes: (i) the PRA's considerations when appointing a skilled person; (ii) the PRA's considerations when determining whether it should use its powers under FSMA to obtain a report by a skilled person or to appoint a skilled person to collect or update information; and (iii) the PRA's expectations of an appointed skilled person.

The Supervisory Statement is available at:

<http://www.bankofengland.co.uk/pr/ Documents/publications/ss/2015/ss714update.pdf>.

Consumer Protection

US Consumer Financial Protection Bureau Sends Industry Letter on Know Before You Owe Mortgage Disclosure Rule Compliance

On October 2, 2015, the US Consumer Financial Protection Bureau sent a letter to mortgage industry trade groups specifying details regarding initial examinations for compliance with the Know Before You Owe mortgage disclosure rule (also known as the TILA-RESPA Integrated Disclosure regulation). The rule, which became effective October 3, 2015, requires institutions supervised by the CFPB to introduce more simplified mortgage disclosure forms. The CFPB intends to conduct initial examinations for compliance with the rule. Although the initial examinations will take into account the scale and scope of modifications necessary for each supervised institution, the CFPB letter re-stated the expectation that supervised institutions should make a good faith effort to comply with the rule. To that end, the letter detailed the various factors that CFPB examiners will take into consideration, which include: (i) the institution's implementation plan, including actions taken to update policies, procedures and processes; (ii) its training of appropriate staff; and (iii) its handling of early technical problems.

The press release is available at: <http://www.consumerfinance.gov/newsroom/cfpb-sends-industry-letter-on-know-before-you-owe-mortgage-disclosure-rule-compliance/>.

Credit Ratings

European Securities and Markets Authority Reports on Aspects of EU Regulation of Credit Rating Agencies

On October 2, 2015, the European Securities and Markets Authority published a final report on the possibility of establishing mappings of credit ratings published on the European Rating Platform (a public website to be launched by ESMA in 2016 which will allow comparability of all ratings given by rating agencies registered and authorized in the EU), as required under the amended Credit Rating Agencies Regulation. The aim of credit rating mapping would be to assist users of credit ratings in comparing ratings given by different credit agencies for the same entities. ESMA recommends that the European Commission not take any action at this point in terms of mapping and that ESMA should instead focus on constantly updating its information and data which allows users of credit ratings to carry out their own research. ESMA also published two sets of technical advice to the Commission. The first advice is on reducing sole and mechanistic reliance on external credit ratings which considers the measures in place to date to reduce reliance on credit ratings and recommends that efforts should focus on removing reliance on credit ratings instead of trying to remove references to credit ratings in all EU legislation. The second advice is on competition, choice and conflicts of interest in the credit rating industry which considers the impact of certain provisions of the CRA Regulation on competition, conflicts of interest and structured finance instruments which were introduced in 2013. The Commission must report to the European Parliament and Council by December 31, 2016 on whether references to credit ratings in EU legislation should be removed when the latest provisions of CRA are implemented. ESMA proposes to reassess the implementation of the CRA Regulation within the next three to five years.

The report and technical advice are available at: <http://www.esma.europa.eu/news/ESMA-sees-progress-reform-EU-credit-rating-industry?t=326&o=home>.

Cyber Security

US Office of the Comptroller of the Currency Highlights National Cybersecurity Awareness Month

On October 1, 2015, the Comptroller of the Currency, Thomas J. Curry, issued a statement recognizing October as National Cybersecurity Awareness Month, as designated by President Obama. Mr. Curry stated that the goal of the month is to "raise awareness of threats to the data systems that have become part of our everyday lives and to encourage each of us to take steps to safeguard those systems." Mr. Curry's statement noted the increasing prevalence of

cybersecurity breaches and encouraged banks/thrifts and supervisory agencies to work together to prevent breaches and to ensure that institutions have a plan in place to effectively detect, assess, and respond to cyber-attacks.

The press statement is available at: <http://www.occ.gov/news-issuances/news-releases/2015/nr-occ-2015-133.html>.

Derivatives

US Commodity Futures Trading Commission's Division of Market Oversight Issues Additional Time-Limited No-Action Relief from Electronic Reporting Requirements in the OCR Final Rule

On September 28, 2015, the US Commodity Futures Trading Commission's Division of Market Oversight issued a no-action letter, CFTC Letter No. 15-52, that provides additional time for reporting parties to comply with certain reporting requirements of the ownership and control final rule (OCR Final Rule). The OCR Final Rule introduces to the CFTC's transaction and reporting program certain new and updated forms for reporting trader identification and market participant data. CFTC Letter No. 15-52 supersedes previous no-action relief issued in February 2015, and extends relief until April 2016, September 2016, or February 2017, depending on the type of reporting requirement.

The press release is available at: <http://www.cftc.gov/PressRoom/PressReleases/pr7248-15>.

CFTC Letter No. 15-52 is available at: <http://www.cftc.gov/idc/groups/public/@llettergeneral/documents/letter/15-52.pdf>.

European Securities and Markets Authority Writes to European Commission on Technical Standards for Indirect Clearing

On October 2, 2015, ESMA sent a letter to Jonathan Hill, Commissioner for Financial Stability, Financial Services and CMU at the European Commission on the Regulatory Technical Standards for indirect clearing for OTC derivatives under the European Market Infrastructure Regulation and the draft RTS on exchange-traded derivatives under the Markets in Financial Instruments Regulation. Both the final RTS under EMIR and the draft RTS under MiFIR aim to specify the types of indirect contractual arrangements that do not increase counterparty risk. Under MiFIR, the draft RTS on indirect clearing must be consistent with the RTS under EMIR. ESMA considers that the RTS under EMIR need to be revised to take into account the feedback received on the proposed draft RTS under MiFIR. ESMA therefore intends to consult on the possible changes to the EMIR RTS to align them with the draft MiFIR RTS. ESMA will submit the draft MiFIR RTS and draft amended EMIR RTS to the Commission together, following its consultation.

The letter is available at: <http://www.esma.europa.eu/news/ESMA-informs-European-Commission-delay-submitting-RTS-indirect-clearing-under-MiFIR?t=326&o=home>.

Enforcement

US Commodity Futures Trading Commission Orders Deutsche Bank AG to Pay a \$2.5 Million Civil Monetary Penalty for Swaps Reporting Violations

On September 30, 2015, the US CFTC issued its first action enforcing new requirements issued pursuant to Dodd-Frank that provide for real-time public reporting of swap transactions and the reporting of swap data to swap data repositories, against Deutsche Bank. The Order finds that Deutsche Bank, a provisionally registered Swap Dealer, failed to properly report its swaps transactions and did not have a satisfactory supervisory system governing its swaps reporting requirements. Deutsche Bank is required to pay a \$2.5 million civil monetary penalty in addition to complying with certain steps to improve its internal controls related to the accuracy of its swaps reporting.

The CFTC press release is available at: <http://www.cftc.gov/PressRoom/PressReleases/pr7255-15>.

The CFTC Order is available at:

<http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfdeutscheorder093015.pdf>.

Financial Market Infrastructure

Financial Stability Board Releases Progress Report on FX Benchmark Reforms

On October 1, 2015, the Financial Stability Board published a report detailing its progress in implementing its September 2014 recommendations for reforms to Foreign Exchange benchmarks. Although the report states that progress has been made in implementing many of the recommendations, the FSB notes that there are still areas where progress has been mixed. Specifically, among other things, the report reiterates that the FSB recommendations are intended to apply to all FX benchmarks, not just the London 4pm fix benchmark. The FSB asserts that a more complete implementation of the recommendations, particularly regarding other FX benchmarks, is essential to building upon improvements already witnessed.

The report is available at: http://www.financialstabilityboard.org/wp-content/uploads/r_140930.pdf.

Financial Services

European Commission Publishes Guide on Crowdfunding for Small and Medium Enterprises

On September 29, 2015, the European Commission published a guide for small and medium enterprises on how to use crowdfunding. The guide describes the different types of crowdfunding available, such as peer-to-peer lending as well as equity, revenue-sharing, and debt-securities crowdfunding and includes details on how to plan and prepare for crowdfunding.

The guide is available at:

<http://ec.europa.eu/DocsRoom/documents/10229/attachments/1/translations/en/renditions/native>.

European Commission Publishes Action Plan for Capital Markets Union

On September 30, 2015, the European Commission published its Action Plan for building the CMU. The Action Plan follows the Commission's announcement and consultation in February 2015. The Action Plan sets out the steps for the medium and long term that the Commission intends to take in five priority areas, which are: (i) providing more funding choices to EU businesses; (ii) ensuring an appropriate regulatory framework for long term investment and financing of Europe's infrastructure; (iii) increasing investment and choices for retail and institutional investors; (iv) improving bank lending capacity; and (v) removing cross-border barriers and developing more harmonized capital markets for all Member States. The Action Plan includes a detailed action list and indicative timeline of steps that the Commission intends to take, including publishing proposals to amend the Prospectus Directive before the end of 2015. Several proposals and consultations were published with the Action Plan, including (i) a call for evidence on the impact of the EU regulatory framework for financial services which seeks feedback on rules affecting the ability of the economy to finance itself and growth, unnecessary regulatory burdens, inconsistencies, gaps and unintended consequences; and (ii) a proposed Commission Delegated Regulation amending the regulatory capital requirements for several categories of assets held by insurance and reinsurance undertakings.

The other publications are detailed further on this website: <http://finreg.shearman.com>.

The Action Plan is available at: http://ec.europa.eu/finance/capital-markets-union/docs/building-cmu-action-plan_en.pdf.

The Call for Evidence is available at: http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/docs/consultation-document_en.pdf.

The proposed Commission Delegated Regulation is available at:

http://ec.europa.eu/finance/insurance/docs/solvency/solvency2/amendment/20150930-amendment-to-the-delegated-act_en.pdf.

Funds

European Commission Consults on a Review of EU Venture Capital Investment Funds

On September 30, 2015, the European Commission launched a consultation into the review of the European Venture Capital Funds Regulation and the European Social Entrepreneurships Funds Regulation as part of its CMU initiative. The Commission is seeking views on steps that could be taken to improve the take-up of EuVECA and EuSEF funds through amendments to the two Regulations. Proposals include: (i) allowing managers authorized under the Alternative Investment Fund Managers Directive to be able to offer EuVECA and EuSEF funds to clients; (ii) exempting managers of EuVECA and EuSEF funds from authorization under AIFMD once they exceed the €500 million threshold; (iii) reducing the minimum subscription threshold for non-professional investors to attract more private investors; (iv) harmonization of registration requirements, including related costs; (v) extending the EuVECA and EuSEF Regulations to third country managers; (vi) extending the range of eligible assets that a EuVECA fund can invest in; and (vii) harmonizing requirements for the marketing of funds and fees for cross-border notifications. The consultation closes on January 6, 2016.

The consultation paper is available at: http://ec.europa.eu/finance/consultations/2015/venture-capital-funds/docs/consultation-document_en.pdf.

Recovery & Resolution

President of the US Federal Reserve Bank of New York Delivers Speech on Regulation and Liquidity Provision

On September 30, 2015, William C. Dudley, President and Chief Executive Officer of the US Federal Reserve Bank of New York, delivered a speech at the SIFMA Liquidity Forum reiterating the need to strike a proper balance between sound regulation and liquidity in financial markets. Specifically, his remarks examined market liquidity in two important fixed-income markets: the US Treasury market and the US corporate bond market. He discussed, among other things, methods on how to measure liquidity, evidence of how liquidity has changed in recent years, factors that could influence liquidity provision, and costs associated with shifts in liquidity. Dudley expressed his support for the recommendations in the recently issued interagency report on the October 15, 2014 Treasury market flash rally, including the need to better understand the implications of the evolving Treasury market structure and liquidity and how changes in regulation and market structure influence liquidity conditions more generally. Specifically, he called for study and data analysis as to whether there is a decrease in liquidity and/or an increase in liquidity risk that is costly or poses a risk to financial stability and whether regulation can be altered to improve the balance between enhancing financial stability and the costs of such regulation, including adverse impacts on liquidity.

The speech is available at: <http://www.newyorkfed.org/newsevents/speeches/2015/dud150930.html>.

Securities

European Commission Consults on EU Covered Bond Framework

On September 30, 2015, the European Commission launched a consultation on proposed action to address the legal and practical issues in the EU covered bond market to facilitate cross-border investment within the EU and from third countries. The consultation forms part of the Commission's CMU initiative. The regulation of covered bonds is a matter of Member State national laws although the prudential treatment of covered bonds is provided for in a variety of EU legislative acts such as the Units for Collective Investment in Transferable Securities Directive, the CRR and the Bank Recovery and Resolution Directive. There are differences between the legal frameworks and supervisory practices of various EU Member States for covered bonds as highlighted by the EBA in its July 2014 report. The Commission is proposing a more integrated EU-wide covered bond framework that could be reflected in legislation and/or a set of

recommendations and the consultation paper includes a discussion of the various approaches that might be taken in an effort to introduce harmonization across the EU. The consultation closes on January 6, 2016.

The EU Covered Bond consultation paper is available at: http://ec.europa.eu/finance/consultations/2015/covered-bonds/docs/consultation-document_en.pdf.

European Securities and Markets Authority Publishes Final Guidelines on Alternative Performance Measures

On October 5, 2015, ESMA published its final Guidelines on Alternative Performance Measures for listed issuers. An APM is a financial measure of historical or future financial performance, position or cash flow and is usually derived from financial statements prepared by an issuer. The Guidelines aim to assist users in making investment decisions and encourage European issuers to publish comparable, transparent and reliable information on their financial performance so that users can obtain a comprehensive understanding of their performance. The Guidelines apply to issuers with securities traded on regulated markets that are required to publish regulated information under the EU Transparency Directive, any persons responsible for drawing up a prospectus under the EU Prospectus Directive and relevant EU national regulators. The Guidelines will apply to APMs disclosed on or after July 3, 2016.

The Guidelines are available at: <http://www.esma.europa.eu/news/ESMA-publishes-final-guidelines-Alternative-Performance-Measures?t=326&o=home>.

People

Securities and Exchange Commission Appoints Associate Director in the Division of Economic and Risk Analysis

On October 2, 2015, the US Securities and Exchange Commission announced that Chyhe Becker has been named the Associate Director in the Division of Economic and Risk Analysis, responsible for the Office of Litigation Economics. The appointment is effective immediately.

The press release is available at: <http://www.sec.gov/news/pressrelease/2015-228.html>.

European Stability Mechanism Announces New Management Board Member

On October 1, 2015, the European Stability Mechanism announced that Françoise Blondeel has been promoted to its Management Board. Ms. Blondeel was previously Head of Middle and Back Office at the ESM and will now also be in charge of the ESM's internal coordination.

The press release is available at: <http://www.esm.europa.eu/press/releases/esm-appoints-fran%C3%A7oise-blondeel-to-management-board>.

Upcoming Events

October 12, 13, 19, 20 and 21, 2015: Financial Conduct Authority workshop for Credit Unions: Senior Managers and Certification Regimes Improving Individual Accountability.

October 7, 2015: EBA Public Hearing on proposed guidelines on cooperation agreements between deposit guarantee schemes (registration closed).

October 12, 2015: EBA Public Hearing on credit valuation adjustment exemption of non-financial counterparties established in a third country (registration closed).

October 15, 2015: EBA Public Hearing on the report on the calibration of a stable funding requirement under the CRR (registration closed).

October 19, 2015: FCA MiFID II Wholesale Firms conference.

November 3, 4, 5, 9 and 11, 2015: FCA workshop for Credit Unions: Senior Managers and Certification Regimes Improving Individual Accountability.

November 4, 2015: European Central Bank Forum on Banking Supervision (registration by invitation only).

November 11, 2015: BoE Open Forum.

November 13, 2015: EBA public hearing on the harmonized definition of default under the CRR.

November 18 and 19, 2015: EBA Fourth Annual Research Workshop: Financial regulation and the real economy: a micro prudential perspective.

Upcoming Consultation Deadlines

October 9, 2015: Committee on Payments and Market Infrastructures and International Organization of Securities Commissions Consultation on Harmonization of Key OTC Derivatives Data Elements.

October 19, 2015: Federal Reserve Board Proposed Revisions to Systemic Risk Reporting by Large Bank Holding Companies.

October 30, 2015: PRA and FCA Consultations on implementation of ring-fencing transfer schemes.

October 31, 2015: ESMA Consultation on draft Implementing Technical Standards under MiFID II and MiFIR.

November 9, 2015: FCA Consultation on Part I of Implementation of UCITS V Directive.

December 7, 2015: FCA Consultation on Part III of Implementation of UCITS V Directive.

December 24, 2015: ESMA consultation on RTS for the European Single Electronic Format under the Transparency Directive.

January 6, 2015: European Commission Consultation on EU Covered Bond Framework.

January 6, 2015: European Commission Consultation on EU Venture Capital Investment Funds Regulation and European Social Entrepreneurships Funds Regulation.

January 22, 2016: EBA Consultation on draft guidelines on application of definition of default under the CRR.

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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