

## Financial Regulatory Developments Focus



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**In this newsletter, we provide a snapshot of the principal European, US and global financial regulatory developments of interest to banks, investment firms, broker-dealers, market infrastructures, asset managers and corporates**

### Derivatives

#### Delegated Regulations on Extraterritoriality Published in European Official Journal

On 21 March 2014, the European Delegated Regulations, which set out regulatory technical standards (“RTS”) on the direct, substantial and foreseeable effect of contracts within the Union and to prevent the evasion of rules and obligations, were published in the Official Journal of the European. The Regulations will come into effect on 11 April 2014, except for provisions establishing the criteria for an OTC derivative contract to be considered as having direct, substantial and foreseeable effect within the Union, which come into force on 10 October 2014.

The Delegated Regulations are available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.085.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.085.01.0001.01.ENG).

#### EU Clearing Obligation Start Date a Step Closer

On 19 March 2014, the European Securities and Markets Authority (“ESMA”) announced that Nasdaq OMX Clearing AB was the first EU-based central counterparty (“CCP”) to be granted authorization under the European Market Infrastructure Regulation (“EMIR”). ESMA must now prepare and submit to the European Commission for endorsement, draft RTS on the clearing obligation that is to apply to the asset classes that Nasdaq OMX Clearing AB is authorized to clear by 18 September 2014. ESMA has established registries for authorized CCPs and a list of asset classes that a CCP has been authorized to clear.

The ESMA press release is available at: <http://www.esma.europa.eu/news/ESMA-publishes-list-authorized-CCPs-and-OTC-derivatives?t=326&o=home>.

#### European Commission Letter to ESMA on the Definition of Derivatives under EMIR and MiFID

On 20 March 2014, ESMA published the European Commission’s response to ESMA’s letter in February 2014 which highlighted the differences across the EU to the application of the definition of “financial instrument” under the Markets in

Financial Instruments Directive (“MiFID”) and the negative effects of that inconsistent application on the application of EMIR in relation to derivatives. The European Commission has asked ESMA to (i) provide details on the transposition in member states of the definition of an FX forward, the commonly accepted delivery period for currencies and the developments in the FX markets since the implementation of MiFID; (ii) to assess the status of physically settled commodity forwards as part of its preparation for its advice under MiFID II; and (iii) to consider issuing guidelines on the definition of commodity forwards that can be physically settled.

The Commission’s letter is available at: <http://www.esma.europa.eu/news/EC-response-ESMA-classification-financial-instruments>.

#### **CFTC Division of Swap Dealer and Intermediary Oversight Issues No-Action Letter Regarding the De Minimis Threshold for Swaps with Utility Special Entities**

On 21 March 2014, the Commodity Futures Trading Commission’s (“CFTC”) Division of Swap Dealer and Intermediary Oversight (“DSIO”) issued a letter providing no-action relief from certain requirements in the de minimis exception from the definition of the term “swap dealer”. The no-action relief allows an entity to deal in utility operations-related swaps, as that term is defined in the letter, and not be required to register as a swap dealer, provided that the aggregate gross notional amount of swap dealing activity does not exceed \$8 billion per year.

The CFTC no-action letter is available at: <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-34.pdf>.

#### **CFTC Requests Public Comment on Swap Data Reporting Rules**

On 19 March 2014, the CFTC approved for publication in the Federal Register a request for public comment on the CFTC’s swap data recordkeeping and reporting requirements under Part 45 and related provisions of the CFTC’s Swap Data Reporting Rules. Part 45 requires reporting counterparties and reporting entities to submit swap transaction data to swap data repositories via electronic reporting to enable the CFTC to perform a range of market integrity, risk monitoring, and other supervisory functions. The request for comment seeks public input on approximately 70 questions addressing such topics as the reporting of primary economic terms, confirmation and continuation data; the manner in which the reporting rules address different transaction types, business models and data flows present in swaps markets; the reporting of cleared swaps; and data harmonization. Comments on the proposed CFTC rules must be submitted by 18 May 2014.

The proposed CFTC rules are available at: <http://www.cftc.gov/PressRoom/PressReleases/federalregister031914>.

### ISDA Publishes First Clearing Member Reliance Opinions

On 18 March 2014, the International Swaps & Derivatives Association (“ISDA”) published the first two clearing member reliance legal opinions relating to the ISDA/FOA Client Cleared OTC Derivatives Addendum. The legal opinions are for Denmark and the Cayman Islands. Further legal opinions will be published in due course.

The ISDA press release is available at: <http://www2.isda.org/news/isda-publishes-the-first-clearing-member-reliance-opinions>.

### ISDA and FIA Europe Request Guidance on Frontloading

On 20 March 2014, ISDA and FIA Europe published a letter to ESMA requesting that the European authorities provide guidance as soon as possible to minimize the impact of frontloading and asking that the ESMA draft RTS on the clearing obligation in relation to Nasdaq OMX Clearing AB be prepared as soon as possible.

The letter is available at:

[http://www.foa.co.uk/admin/tiny\\_mce/jscripts/tiny\\_mce/plugins/filemanager/files/ISDA-FIA\\_Europe\\_letter\\_to\\_ESMA\\_and\\_EC\\_-\\_frontloading\\_20\\_March\\_2014.pdf](http://www.foa.co.uk/admin/tiny_mce/jscripts/tiny_mce/plugins/filemanager/files/ISDA-FIA_Europe_letter_to_ESMA_and_EC_-_frontloading_20_March_2014.pdf).

## Recovery & Resolution

### EU Political Agreement on Single Resolution Mechanism

The European authorities announced on 20 March 2014 that the European Parliament and the Council of the European Union had reached a provisional agreement on the proposed Regulation on a Single Resolution Mechanism (“SRM”) and the related intergovernmental agreement on the Single Resolution Fund. It is expected that the European Parliament will vote in its April plenary session and that the Council will formally adopt the SRM subsequently in order to formalize the agreement. The SRM is part of the EU Banking Union under which the largest banks in the euro zone will be directly prudentially supervised by the European Central Bank (known as the Single Supervisory Mechanism (“SSM”)).

The Council’s press release is available at:

[http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/ecofin/141672.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ecofin/141672.pdf).

## Regulatory Capital

### EBA Consults on Revised XBRL Taxonomy for Supervisory Reporting under CRD IV

On 21 March 2014, the European Banking Authority (the “EBA”) published a consultation paper on a proposed revised version of its XBRL taxonomy (originally published on 2 December 2013) for supervisory reporting to incorporate additional reporting requirements for asset encumbrance,

non-performing exposures and forbearance. The EBA currently envisages that the final XBRL taxonomy will be used for reporting of Asset Encumbrance data from 30 June 2014, for FINREP from 30 September 2014, and for other COREP reporting from either of those two dates. The XBRL taxonomy is aimed at ensuring consistent reporting of data by regulators to the EBA, however it can also be used to collect data from banks and investment firms. Comments on the proposals are requested by 14 April 2014.

The consultation paper is available at:

<http://www.eba.europa.eu/documents/10180/632822/EBA+CP+2014+03+%28XBRL+Taxonomy%29.pdf>.

#### **Federal Reserve Board and Federal Open Market Committee Release FOMC Statement and Economic Projections from the 18-19 March FOMC Meeting**

On 19 March 2014, the Board of Governors of the Federal Reserve System (“Federal Reserve Board”) issued a policy statement following the 18 -19 March meeting of the Federal Open Market Committee (“FOMC”). The Federal Reserve Board and the FOMC also released a table and charts summarizing the economic projections and the target federal funds rate projections made by Federal Reserve Board members and Federal Reserve Bank presidents for the FOMC meeting. The table will be incorporated into a summary of economic projections released with the minutes of the March meeting. The minutes of regularly scheduled FOMC meetings are released three weeks after the date of the policy decision. Summaries of economic projections are released quarterly.

The policy statement is available at:

<http://www.federalreserve.gov/newsevents/press/monetary/20140319a.htm>.

The advance release of table 1 of the summary of economic projections to be released with the FOMC minutes is available at:

<http://www.federalreserve.gov/monetarypolicy/fomcprojtbl20140319.htm>.

#### **Basel Committee Agrees Risk Weight for the ESM and EFSF**

The Basel Committee on Banking Supervision announced on 18 March 2014 that regulators may allow banks to apply a 0% risk weight to claims on the European Stability Mechanism and the European Financial Stability Facility.

The newsletter is available at: [http://www.bis.org/publ/bcbs\\_n17.htm](http://www.bis.org/publ/bcbs_n17.htm).

## **Financial Market Infrastructure**

#### **ESMA Consults on Technical Standards under CSD Regulation**

On 20 March 2014, ESMA published a discussion paper on the draft technical standards for the Regulation on improving securities settlement in the European Union and on central securities depositories (“CSDs”). The discussion paper aims to obtain views on ESMA’s proposed approach to the technical standards it is required to prepare under the CSD Regulation. Political agreement on the CSD

Regulation was reached on 26 February 2014. The final version of the CSD Regulation is still to be published in the Official Journal. The CSD Regulation (i) introduces an obligation to represent all transferable securities in book entry form and to record those securities in CSDs before trading them on regulated markets; (ii) harmonizes settlement periods and regimes across the EU; and (iii) establishes a common set of rules on the operations and services of CSDs, including uniform licensing and EU passport regimes. Responses to the discussion paper are due by 22 May 2014.

The discussion paper is available at: <http://www.esma.europa.eu/content/Draft-Technical-Standards-Regulation-improving-securities-settlement-European-Union-and-cent>.

## Financial Services

### FCA Details its Approach to Supervision

The Financial Conduct Authority (the “FCA”), on 19 March 2014, published guides for firms on its approach to supervision. The guides explain how the FCA has divided firms into four conduct categories and four prudential categories and the level of supervision that will apply to each category. The categories for conduct supervision reflect the size and retail customer numbers or wholesale presence of firms. The prudential categorization reflects the size, trading activity, positions as intermediary or provider, impact a firm’s failure would have on its customers and the markets, and any significant holding of client money and assets.

The guides are available at: <http://www.fca.org.uk/about/what/regulating/how-we-supervise-firms/our-approach-to-supervision>.

### Bank of England Announces Strategic Plan

On 18 March 2014, the Bank of England (the “BoE”) announced its Strategic Plan to amend the internal structure of the BoE to reflect its expanded policy objectives and create a unified vision. The organizational changes announced will take effect on 1 June 2014.

The BoE press release is available at:

<http://www.bankofengland.co.uk/publications/Pages/news/2014/058.aspx>.

### Federal Agencies Issue Proposed Rule on Minimum Requirements for Appraisal Management Companies

On 24 March 2014, the Office of the Comptroller of the Currency (“OCC”), the Federal Reserve Board, the Federal Deposit Insurance Corporation (“FDIC”), the Consumer Financial Protection Bureau, the Federal Housing Finance Agency, and the National Credit Union Administration issued a proposed rule that would implement minimum requirements for state registration and supervision of appraisal management companies (“AMCs”). An AMC is an entity that serves as an intermediary between appraisers and lenders and provides appraisal

management services. The minimum requirements in the proposed rule would apply to states that elect to establish an appraiser certifying and licensing agency with the authority to register and supervise AMCs. The proposed rule would not compel a state to establish an AMC registration and supervision program, and there is no penalty imposed on a state that does not establish a regulatory structure for AMCs. However, an AMC is barred from providing appraisal management services for federally- related transactions in a state that has not established such a regulatory structure. Comments on this rule must be submitted by 23 May 2014.

The full text of the proposed rule is available at:

<http://www.fdic.gov/news/news/press/2014/pr14021a.pdf>.

## Funds

### SEC Releases Analysis of Data and Academic Literature Related to Money Market Fund Reform

On 24 March 2014, the Securities and Exchange Commission (“SEC”) made available certain analyses of data and academic literature related to money market fund reform. The analyses, which were conducted by the staff of the SEC’s Division of Economic and Risk Analysis, are available for review and comment on the SEC’s website as part of the comment file for rule amendments proposed by the SEC in June 2013 regarding money market fund reform.

The SEC announcement and analysis is available at:

<http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370541253716>.

## Enforcement

### FCA Bans and Fines Trader for Market Manipulation

On 20 March 2014, the FCA announced that it had banned Mark Stevenson, a bond trader, from the industry and fined him £662,700 for manipulating a UK gilt on 10 October 2011. The action is the first enforcement action for attempted or actual manipulation of the gilt market.

The FCA press release is available at: <http://www.fca.org.uk/news/press-releases/fca-bans-and-fines-trader-660k-for-manipulating-gilt-price-during-qe>.

### FCA Fines Insurance Broker for Anti-Bribery Failures

The FCA fined Besso Limited, an insurance broker, for failing to take reasonable care to establish and maintain effective systems and controls against bribery and corruption. The FCA is currently carrying out a thematic review of the anti-bribery and corruption systems and controls that smaller general insurance brokers have in place.

The FCA press release is available at: <http://www.fca.org.uk/news/press-releases/besso-limited-fined-for-antibribery-and-corruption-systems-failings>.

## People

### New Senior Appointments at the Bank of England

Three new senior appointments have been made at the BoE: Anthony Habgood as the Chairman of Court, Dr. Ben Broadbent as Deputy Governor for Monetary Policy (both effective 1 July 2014) and Dr. Nemat Shafik as Deputy Governor of the Bank of England, responsible for Markets and Banking (effective 1 August 2014). Dr. Shafik will sit on the Monetary Policy Committee, the Financial Policy Committee, and the BoE's Court of Directors. She will also be appointed to the Board of the Prudential Regulation Authority. The announcements are linked to the BoE's Strategic Plan discussed above.

The BoE press release is available at:

<http://www.bankofengland.co.uk/publications/Pages/news/2014/057.aspx>.

## Events

27 March 2014: EBA public hearing on consultation on the margin periods for risk used for the treatment of clearing members' exposures to clients.

4 April 2014: EBA public hearing on consultation on draft technical standards on the mapping of ECAIs credit assessments.

14 April 2014: ESMA Public Hearing on draft technical standards under the CSD Regulation.

25 March 2014: US House of Representatives Committee on Financial Services hearing entitled "Why Debt Matters".

26 March 2014: US Senate Committee on Banking, Housing and Urban Affairs hearing entitled "Are Alternative Financial Products Serving Consumers?".

## EUROPE

**BARNEY REYNOLDS**

T: +44 20 7655 5528

[barney.reynolds@shearman.com](mailto:barney.reynolds@shearman.com)

London

**AZAD ALI**

T: +44 20 7655 5659

[azad.ali@shearman.com](mailto:azad.ali@shearman.com)

London

**ANNA DOYLE**

T: +44 20 7655 5978

[anna.doyle@shearman.com](mailto:anna.doyle@shearman.com)

London

**ELLERINA TEO**

T: +44 20 7655 5070

[ellerina.teo@shearman.com](mailto:ellerina.teo@shearman.com)

London

**JAMES CAMPBELL**

T: +44 20 7655 5570

[james.campbell@shearman.com](mailto:james.campbell@shearman.com)

London

**THOMAS DONEGAN**

T: +44 20 7655 5566

[thomas.donegan@shearman.com](mailto:thomas.donegan@shearman.com)

London

**JOHN ADAMS**

T: +44 20 7655 5740

[john.adams@shearman.com](mailto:john.adams@shearman.com)

London

**MARIA CHAN**

T: +44 20 7655 5835

[maria.chan@shearman.com](mailto:maria.chan@shearman.com)

London

**NATALIE CALDWELL**

T: +44 20 7655 5722

[natalie.caldwell@shearman.com](mailto:natalie.caldwell@shearman.com)

London

**BILL MURDIE**

T: +44 20 7655 5149

[bill.murdie@shearman.com](mailto:bill.murdie@shearman.com)

London

**KOLJA STEHL**

T: +49 69 9711 1623

[kolja.stehl@shearman.com](mailto:kolja.stehl@shearman.com)

Frankfurt

**MAK JUDGE**

T: +44 20 7655 5182

[mak.judge@shearman.com](mailto:mak.judge@shearman.com)

London

**OLIVER LINCH**

T: +44 20 7655 5715

[oliver.linch@shearman.com](mailto:oliver.linch@shearman.com)

London

## AMERICAS

**DONALD N. LAMSON**

T: +1 202 508 8130

[donald.lamson@shearman.com](mailto:donald.lamson@shearman.com)

Washington, DC

**JENNIFER D. MORTON**

T: +1 212 848 5187

[jennifer.morton@shearman.com](mailto:jennifer.morton@shearman.com)

New York

**JARED R. GIANATASIO**

T: +1.212.848 4384

[jared.gianatasio@shearman.com](mailto:jared.gianatasio@shearman.com)

New York

**RUSSELL D. SACKS**

T: +1 212 848 7585

[rsacks@shearman.com](mailto:rsacks@shearman.com)

New York

**SYLVIA FAVRETTO**

T: +1 202 508 8176

[sylvia.favretto@shearman.com](mailto:sylvia.favretto@shearman.com)

Washington, DC

**BRADLEY K. SABEL**

T: +1 212 848 8410

[bsabel@shearman.com](mailto:bsabel@shearman.com)

New York

**CHRISTINA BROCH**

T: +1 202 508 8028

[christina.broch@shearman.com](mailto:christina.broch@shearman.com)

Washington, DC

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ABU DHABI | BEIJING | BRUSSELS | FRANKFURT | HONG KONG | LONDON | MILAN | NEW YORK | PALO ALTO  
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This memorandum 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.

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