

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.

Bank Prudential Regulation & Regulatory Capital

Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation Authority

On January 7, 2015, the US Department of the Treasury (“US Treasury”), acting for the US Financial Stability Oversight Council (“FSOC”), issued a proposed rulemaking aimed to implement the Qualified Financial Contract (“QFC”) recordkeeping requirements of the Dodd-Frank Act. The proposed rules would apply to financial companies with \$50 billion or more in consolidated assets, financial companies designated by the FSOC, as well as financial affiliates of these companies and would require recordkeeping of positions, counterparties, legal documentation and collateral. This information is needed to help the Federal Deposit Insurance Corporation (“FDIC”) as receiver to, among other things, decide whether to transfer QFCs, evaluate the consequences of decisions to transfer, disaffirm or permit the termination of QFCs with one or more counterparties, and conclude whether any financial systematic risks are posed by the transfer, disaffirmation or termination of such QFCs in the case of a distressed situation. The deadline for comments is April 7, 2015.

The US Treasury press release is available at:

<http://www.treasury.gov/connect/blog/Pages/Recordkeeping-Requirements-Proposed.aspx> and the Federal Register notice of proposed rulemaking is available at: <http://www.gpo.gov/fdsys/pkg/FR-2015-01-07/pdf/2014-30734.pdf>.

Bank Structural Reform

Volcker Rule FAQs Updated

On December 23, 2014, the Board of Governors of the Federal Reserve (“Federal Reserve Board”) along with other regulatory agencies responsible for implementing the Volcker Rule added an additional question under the Volcker Rule Frequently Asked Questions (“FAQs”) page relating to metrics reporting and confidentiality under the Freedom of Information Act (“FOIA”). The updated FAQs indicate that the agencies will maintain the confidentiality of the reported

information to the extent permitted by law and encourages entities subject to Appendix A of the Volcker Rule to evaluate potential exemptions and ask for confidential treatment if appropriate, including under Exemption 4 of the FOIA, which exempts confidential trade secrets and commercial information from disclosure.

The updated Volcker Rule FAQs are available at:

<http://www.federalreserve.gov/bankinfo/volcker-rule/faq.htm>.

Credit Ratings

Regulatory Technical Standards under EU Credit Ratings Agencies Regulation Published in Official Journal of the European Union

On January 5, 2015, three Delegated Regulations of Regulatory Technical Standards (“RTS”) required under the Credit Ratings Agencies Regulation (“CRA Regulation”) were published in the Official Journal of the European Union:

1. Delegated Regulation for the periodic reporting on fees charged by credit rating agencies for the purpose of ongoing supervision by the European Securities and Markets Authority (“ESMA”). This applies from January 26, 2015.
2. Delegated Regulation for the presentation of the information that credit rating agencies make available to ESMA. This applies from June 21, 2015.
3. Delegated Regulation on disclosure requirements for structured finance instruments. This applies from January 1, 2017.

The objectives of the CRA Regulation include strengthening the existing EU legislation on credit rating agencies, reducing financial institution reliance on external credit ratings and improving competition in the credit ratings industry.

The regulations are available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_002_R_0001&from=EN; http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_002_R_0002&from=EN; and http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_002_R_0003&from=EN.

Derivatives

Proposed Rule Change to Extend the Expiration Date of US Financial Industry Regulatory Authority Rule 0180 Applying Rules to Security-Based Swaps

On January 7, 2014, the US Financial Industry Regulatory Authority (“FINRA”) filed a proposed rule change with the Securities and Exchange Commission (“SEC”) to extend the expiration date of FINRA Rule 0180, which temporarily limits the application of rules such as the FINRA Rule 3110 – the supervision rule

– and the books and records rule to security-based swaps, with certain exemptions. The rule change would extend the expiration date to February 11, 2016.

The text of the proposed rule change is available at:

<http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p602255.pdf>.

CFTC Provides Notice and Clarification of the Reopened Comment Period

Pursuant to a notice published in the Federal Register on January 5, 2015, the US Commodity Futures Trading Commission (“CFTC”) reopened the comment period, and issued a clarification regarding the reopened comment periods, for two position limit rulemakings. On December 9, 2014, the CFTC Agricultural Advisory Committee convened to discuss, among other things, deliverable supply exemptions for hedging positions. To allow commenters enough time to respond to questions raised at the meeting, the CFTC extended the comment periods for an additional 45 days. The CFTC clarified that, in addition to commenting on agenda issues pertaining to agricultural commodities, comments may also include the issues raised at the meeting or in the associated materials posted to the CFTC’s website. The comment period closes January 22, 2015.

The CFTC press release is available at: <http://www.gpo.gov/fdsys/pkg/FR-2015-01-05/pdf/2014-30831.pdf>.

European Securities and Markets Authority Report on Central Counterparties Colleges under European Market Infrastructure Regulation

On January 8, 2015, ESMA issued a report on its involvement with the supervisory colleges established under the European Market Infrastructure Regulation (“EMIR”) for the authorization and supervision of EU-based central counterparties. Supervisory colleges are the channels through which information between home and host authorities is exchanged and through which supervisory activity is coordinated. ESMA is required under EMIR to maintain a coordinating role between national regulators and colleges so as to encourage consistent supervisory practices.

The report is available at: <http://www.esma.europa.eu/news/ESMA-publishes-review-CCP-colleges?t=326&o=home>.

Enforcement

Conviction of Unauthorized Forex Trader

On January 9, 2014, Alex Hope was found guilty of fraud for operating an investment scheme without authorization. Mr Hope claimed to be making large returns for investors by trading their money on the foreign exchange market. He was found to have taken over £5 million of investor money and to have used over £2 million of it for personal expenditure. He appeared to be a successful trader whilst in reality he was making heavy losses. Raj Von Badlo, Mr Hope’s co-defendant, pleaded guilty in July last year to recklessly making false

representations to investors and promoting a collective investment scheme without authorization. Both individuals will be sentenced on January 16, 2015.

Financial Services

US Securities and Exchange Commission Announces Program to Facilitate Analysis of Corporate Financial Data

On December 30, 2014, the SEC introduced a pilot program intended to simplify investor analysis and comparisons of public company financial statement data. The new program will organize data provided by companies into structured data sets which can be used for bulk downloads on the SEC's website by investors. The SEC anticipates that such data sets will be expanded in 2015 to contain data in footnotes to the financial statements.

Examples of financial statement structured data sets are available at:

<http://www.sec.gov/dera/data/financial-statement-data-sets.html>.

US Federal Deposit Insurance Corporation Issues List of Banks Examined for Community Reinvestment Act Compliance

On January 5, 2015, the FDIC issued a list of state non-member banks which were evaluated for compliance with the Community Reinvestment Act ("CRA"). The list relates to evaluation ratings that the FDIC assigned to institutions in October 2014. All of the banks rated received either satisfactory or outstanding ratings. The CRA was instituted in 1977 in order to encourage insured banks and thrifts to meet local credit needs, including those of low-income neighborhoods. Included in the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Congress mandated that the public disclosure of the results of each bank and thrift that undergoes a CRA examination.

The monthly list of banks examined for CRA compliance is available at:

<https://www.fdic.gov/regulations/community/monthly> and the January 2015 list of banks examined for CRA compliance is available at:

<https://www.fdic.gov/regulations/community/monthly/2015/crajan15.html>.

Recovery & Resolution

Further UK Legislation Implementing EU Bank Recovery and Resolution Directive Published

On January 5, 2015, HM Treasury published the Bank Recovery and Resolution Order 2014 ("BRRO") and the Banks and Building Societies (Depositor Preference and Priorities) Order 2014 ("BBSO"). The Banking Act 2009 (Restriction of Special Bail-in Provision, etc.) Order 2014 and the Banking Act 2009 (Mandatory Compensation Arrangements following Bail-in) Regulations 2014 were published in December 2014. These statutory instruments implement the Bank Recovery and Resolution Directive ("BRRD") which establishes a common framework across the EU for the recovery and resolution of troubled banks and investment firms.

The BRRO includes amendments to the Special Resolution Regime (“SRR”) contained in the Banking Act 2009 to ensure compliance with the BRRD. The SSR provides the Bank of England (“BoE”) with various stabilization options to manage a firm’s failure. The BRRO creates a new stabilization option (the transferring of business to an asset management vehicle) in addition to those already in place (i.e. transferring ownership to a private purchaser, transferring some/all of the business to a bridge bank, bail-in of liabilities). The BRRO also includes additional pre-resolution powers, which will enable the BoE to intervene before resolution of a failing firm is required.

The BBSO includes amendments to the Insolvency Act 1986, amending the law on preferential debts by creating a new class of preferential debt. This new class is the part of a bank deposit which exceeds £85,000 and is therefore not covered by the Financial Services Compensation Scheme (“FSCS”). This part of a deposit is treated as Secondary Preferential Debt and will rank after all other Ordinary Preferential Debts, including deposits covered by the FSCS, in the event of a firm’s insolvency.

The BBRO, BBSO and explanatory memorandums are available at:

<http://www.legislation.gov.uk/uksi/2014/3329/contents/made>;

<http://www.legislation.gov.uk/uksi/2014/3486/contents/made>;

<http://www.legislation.gov.uk/uksi/2014/3329/memorandum/contents>; and

<http://www.legislation.gov.uk/uksi/2014/3486/memorandum/contents>.

People

Federal Reserve Board Appoints New Director of Monetary Affairs

On January 6, 2015, the Federal Reserve Board appointed Thomas Laubach as director of the Division of Monetary Affairs.

FDIC Appoints New Regional Director

On January 6, 2015, the FDIC named Michael J. Dean as Atlanta Regional Director.

SEC Appoints New Regional Director

On January 8, 2015, the SEC named Walter Jospin Regional as Director of its Atlanta Office.

Events

February 4, 2015: The Office of the Comptroller of the Currency, the Federal Reserve Board and the FDIC will hold the second in a series of outreach meetings on the interagency effort to reduce regulatory burden as required by the Economic Growth and Regulatory Paperwork Reduction Act of 1996.

January 13, 2015: ESMA open hearing on the Central Securities Depositories Regulation.

January 19, 2015: ESMA open hearing on the issues covered in its consultation under the Markets in Financial Instruments Directive and Markets in Financial Instruments Regulation.

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.

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