

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 infrastructures, asset managers and corporates.

Our Governance & Securities Law Focus Newsletter is Available [here](#).

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Bank Prudential Regulation & Regulatory Capital

US Financial Stability Oversight Council Adopts Supplemental Procedures for Nonbank Financial Company Designations

On February 4, 2015, the US Financial Stability Oversight Council (“FSOC”) adopted certain changes relating to the process of reviewing nonbank financial companies for systemically important financial institution (“SIFI”) designation to make the process more transparent and collaborative. Section 113 of the Dodd-Frank Wall Street and Consumer Protection Act (“Dodd-Frank Act”) enables the FSOC to identify a nonbank financial company for supervision by the Board of Governors of the Federal Reserve System (“Federal Reserve Board”) and be subject to enhanced prudential standards. The changes belong in three categories: (i) improved communication and engagement with companies under consideration by the Council; (ii) better transparency with the public in regards to the designations process, while still protecting sensitive, nonpublic company information; and (iii) improved engagement during the FSOC’s annual reevaluations process.

The FSOC supplemental procedures are available here:

<http://www.treasury.gov/initiatives/fsoc/designations/Documents/Supplemental%20Procedures%20Related%20to%20Nonbank%20Financial%20Company%20Determinations%20-%20February%202015.pdf> and

the updated Frequently Asked Questions are available here:

<http://www.treasury.gov/initiatives/fsoc/designations/Pages/nonbank-faq.aspx>.

UK Government to Proceed with Giving Financial Policy Committee Powers for Leverage Ratio Framework

On February 2, 2015, the UK Government announced that it would be proceeding with the recommendations of the UK Bank of England’s Financial Policy Committee (“FPC”) to give the FPC powers of direction over the housing market and the leverage ratio for UK banks. The new powers will enable the FPC to direct the Prudential Regulation Authority (“PRA”) and Financial Conduct Authority to require regulated lenders to place limits on residential mortgage lending (owner-occupied only) and direct the PRA to set: (i) a minimum leverage ratio requirement; (ii) a supplementary leverage ratio buffer that will apply to globally systemically important banks (“G-SIBs”) and other major domestic UK banks and building societies, including ring-fenced banks; and (iii) a countercyclical leverage ratio buffer. Draft legislation providing for the new FPC powers has been put before the UK Parliament. On February 4, 2015, the FPC published draft policy statements detailing the specific tools, the firms subject to the requirements, timelines for implementation, how the tools might affect financial stability and economic growth, how the FPC intends to take decisions over setting the countercyclical leverage ratio buffer and the proposed calibration of the tools.

The announcement is available at:

<https://www.gov.uk/government/news/government-confirms-new-powers-for-bank-of-england-to-guard-against-future-financial-risks> and the FPC papers are available at:

<http://www.bankofengland.co.uk/financialstability/Pages/fpc/policystatements.aspx>.

Credit Ratings

European Securities & Markets Authority Seeks Evidence on the Credit Rating Industry

On February 3, 2015, the European Securities & Markets Authority (“ESMA”) published a call for evidence on the impact of the EU Credit Rating Agencies Regulation on the credit rating industry and the development of markets for structured finance instruments. ESMA is seeking evidence of how the Credit Rating Agencies Regulation is achieving the objectives of stimulating competition between credit rating agencies, improving

the choice of credit rating agencies available and minimizing conflicts of interests in the industry. The evidence received will be analyzed by ESMA in its development of technical advice to the European Commission as required under the Credit Rating Agencies Regulation. Evidence is required by March 31, 2015 and ESMA must provide its advice by September 2015.

Documents relating to the call for evidence are available at:

<http://www.esma.europa.eu/news/ESMA-launches-Call-evidence-competition-choice-and-conflicts-interest-CRA-industry?t=326&o=home>.

International Organization of Securities Commissions Seeks Information on Other Products Provided by Credit Rating Agencies

On February 4, 2015, IOSCO announced the launch of a project aiming to obtain greater understanding of the credit rating industry and certain other products or services available other than traditional credit ratings publicly disclosed by credit rating agencies. The project will consider products such as other ratings provided by credit rating agencies (for example, private, one-time or regional ratings), scoring, credit and rating assessments and research. Relevant parties are requested to respond to the request for information by March 23, 2015.

The announcement is available at: <http://www.iosco.org/news/pdf/IOSCONEWS363.pdf>.

Derivatives

US Securities and Exchange Commission Proposes Rules for Hedging Disclosure

On February 9, 2014, the US Securities and Exchange Commission (“SEC”) approved the issuance of amendments that would increase corporate disclosure of company hedging policies for directors and employees. The proposed rules, mandated by the Dodd-Frank Act, would require directors, officers and other employees to disclose any hedges or offsetting transactions which would decrease their exposure to equity securities granted by the company as compensation or held, directly or indirectly, by directors or employees.

According to the SEC, the proposed rules, if finalized as proposed, would enhance transparency into corporate governance practices and provides additional information to investors to understand the alignment of employee/directors interests with shareholder interests.

The proposed rule is available on the SEC site here: <http://www.sec.gov/rules/proposed/2015/33-9723.pdf>.

European Securities & Markets Authority Halts Clearing Obligation for NDFs

On February 4, 2015, ESMA published its Feedback Statement on its consultation on the clearing obligation for non-deliverable forwards (“NDFs”). ESMA confirmed that it has decided against moving forward, at this time, with mandatory clearing requirements for NDFs following the concerns raised by industry participants during the consultation which include: (i) the timing of entry into force of the proposed clearing obligation particularly when participants are currently dealing with implementing processes for compliance with the clearing obligation for IRS and CDS; (ii) that only one EU CCP is authorized to clear NDFs; (iii) the lack of experience globally of NDF clearing; (iv) the importance of international consistency in implementation of the proposed clearing obligation; and (v) the lack of a consistent definition for FX derivatives across the EU. ESMA originally proposed regulatory technical standards for clearing NDFs with an implementation schedule beginning in Q4 2015. ESMA is of the view that more time is needed to properly consider those concerns, but stressed that its current position did not exclude the possibility of it proposing a clearing obligation for NDFs in future.

ESMA's feedback statement is available at:

<http://www.esma.europa.eu/news/ESMA-issues-feedback-statement-central-clearing-non-deliverable-forwards?t=326&o=home>.

European Commission Intends to Extend Exemption Period from the Clearing Obligation under EMIR for Pension Schemes

On February 3, 2015, the European Commission published a report on the progress made by CCPs in developing technical solutions for the transfer by pension schemes of non-cash collateral as variation margin. Under the European Market Infrastructure Regulation ("EMIR") pension schemes that meet certain requirements are exempt from the clearing obligation for a temporary period. The exemption was included in EMIR to provide CCPs with time to develop solutions for the transfer of non-cash collateral by pension schemes to meet variation margin calls. CCPs require highly liquid collateral, mostly cash, as variation margin, but pension schemes are not set up to hold large amounts of cash and would have to amend their business model at high costs to do so. The exemption period may be extended under EMIR to provide CCPs with further time to develop solutions. The Commission's report assesses the progress made by CCPs to develop solutions and concludes that not enough progress has been made and that imposing the clearing obligation on pension schemes would adversely effect the retirement benefits of future pensioners. The Commission therefore intends to extend the exemption period for a further two years by adopting a Delegated Act.

The Commission's report is available at:

http://ec.europa.eu/finance/financial-markets/docs/derivatives/150203-report_en.pdf.

Financial Services

European Securities & Markets Authority Publishes Final Technical Advice under New EU Market Abuse Regulation

On February 3, 2015, ESMA published its final technical advice on delegated acts under the new Market Abuse Regulation ("MAR"). The European Commission requested the advice from ESMA to assist it in developing the required Delegated Acts under MAR. ESMA's advice covers: (i) clarification of the indicators of market manipulation; (ii) minimum thresholds for the exemption of certain participants in the emission allowance market from the requirement to publicly disclose inside information; (iii) ways for determining the relevant national regulator for notification of delays in public disclosure of inside information; (iv) clarification on the enhanced disclosure regime for managers' transactions; and (v) reporting of infringements. The European Commission must adopt Delegated Acts on these issues so that they enter into force 24 months after MAR entered into force, which was on July 2, 2014.

ESMA advice is available at:

<http://www.esma.europa.eu/news/ESMA-advises-Commission-implementation-new-market-abuse-regime?t=326&o=home>.

UK Financial Conduct Authority Reviews Regulatory Regime for Crowdfunding Platforms

On February 3, 2015, the UK Financial Conduct Authority ("FCA") published its review of the regulatory regime for crowdfunding. The document sets out the FCA's approach to regulating loan-based and investment-based crowdfunding platforms, including the new rules introduced in March 2014. The FCA does not, at this stage, intend to amend its rules or approach to supervision of the market but will undertake a full review of the crowdfunding market and regulatory framework in 2016.

The FCA review document is available at: <http://www.fca.org.uk/static/documents/crowdfunding-review.pdf>.

Joint Forum Proposes Recommendations on Credit Risk Management Across Sectors

On February 5, 2015, the Joint Forum (made up of the Basel Committee on Banking Supervision, the International Organization of Securities Commissions (“IOSCO”) and the International Association of Insurance Supervisors) launched a consultation on developments in credit risk management across the banking, securities and insurance sectors. The consultation document includes an analysis of responses to a survey conducted in 2013 which included supervisors and firms on credit risk management and four recommendations to supervisors: (i) supervisors should be cautious against over-reliance on internal models for credit risk management and regulatory capital; (ii) supervisors should be aware of the growth of risk-taking behaviors, for example, in the syndicated leveraged loan market, and the need for firms to have appropriate risk management processes; (iii) supervisors should be aware of the growing need for high-quality liquid collateral for margin requirements in derivatives trading; and (iv) supervisors should consider whether firms are accurately capturing CCP exposures as part of their credit risk management. Comments on the paper are requested by March 4, 2015.

The Joint Forum consultation paper is available at: <http://www.bis.org/bcbs/publ/joint37.pdf>.

People

US Securities and Exchange Commission Names New Head of Investment Management Division

On February 3, 2015, the SEC named David Grim as Acting Director of the Division of Investment Management, replacing Norm Champ.

Events

February 19, 2015: ESMA Open Hearing on 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. 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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