



## 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

### Federal Reserve Board Releases Results for 2015 Comprehensive Capital Analysis and Review

On March 11, 2015, the US Board of Governors of the Federal Reserve System announced that it has not objected to the capital plans of 28 bank holding companies participating in the Comprehensive Capital Analysis and Review. However, Bank of America Corporation is required to submit a new capital plan to address weaknesses in its capital planning processes. The Federal Reserve Board did object to the capital plans of Deutsche Bank Trust Corporation and Santander Holdings USA due to qualitative concerns. There were no objections based on quantitative grounds. Goldman Sachs Group, Inc., JPMorgan Chase & Co., and Morgan Stanley needed to submit adjusted capital actions to meet the minimum post-stress minimum capital requirements.

The Federal Reserve Board press release is available at:

<http://www.federalreserve.gov/newsevents/press/bcreg/20150311a.htm>.

The CCAR results are available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20150311a1.pdf>.

### Revised List of Validation Rules Issued by European Banking Authority for Supervisory Reporting

On March 11, 2015, the European Banking Authority published a revised list of validation rules for submitting supervisory reporting data. The rules detail the standards and formats that are to be used for submissions of data by national regulators under the Capital Requirements Directive IV. The revised list displays the rules that have been deactivated due to technical issues or incorrectness.

The EBA press release and updated validation rules are available at: <http://www.eba.europa.eu/-/eba-issues-revised-list-of-its-validation-rul-4>.

## Bank Structural Reform

### UK Regulators Consult on Extending Rules to UK Branches of Non-EEA Institutions

On March 16, 2015, the Prudential Regulation Authority and Financial Conduct Authority jointly published a consultation paper on strengthening accountability in banking, setting out the PRA and FCA's proposed plans for extending and tailoring the Senior Manager's Regime, Certification Regime and Conduct Rules to UK branches of non-EEA institutions. The proposals include: (i) incoming non-EEA branches to have their most senior individual approved by the PRA; (ii) senior managers of incoming branches to be subject to a set of PRA responsibilities which reflect areas subject to UK regulation; and (iii) for the scope of the PRA's certification regime for incoming non-EEA branches to be identical to that of UK firms. The new Senior Managers and Certification Regime will apply from March 7, 2016. Comments on the consultation may be submitted until May 25, 2015.

The consultation is available at: <http://www.bankofengland.co.uk/pru/Documents/publications/cp/2015/cp915.pdf>.

## Consumer Protection

### UK Regulator Publishes Guidance on Risks Posed to Consumers by Inappropriate Performance Management Practices

On March 16, 2015, the FCA published its guidance consultation on risks to customers from performance management at firms. This report is aimed at trade associations as well as all financial firms that deal with retail customers directly. The report discusses performance management practices and acknowledges that poorly executed performance management can lead to mis-selling for various reasons, including pressure to meet individual targets and corporate objectives. The report recommends that firms manage these risks, and identifies poor practices that can create undue

pressure on staff. The guidance recommends that controls should be put in place to mitigate the increased risk of mis-selling adequately. Comments on the consultation may be submitted until May 15, 2015.

The guidance consultation is available at: <http://www.fca.org.uk/static/documents/guidance-consultations/gc15-01.pdf>.

## Derivatives

### US Commodity Futures Trading Commission Solicits Public Comment in Response to the US District Court Order Regarding Cross-Border Litigation

On March 10, 2015, the US Commodity Futures Trading Commission requested public comment on the US District Court of DC's remand order in *Securities Industry and Financial Markets Association, et al. v. CFTC* ("Cross-Border Litigation"). The CFTC release expands on its consideration of costs and benefits of 10 swaps rules regarding the treatment of overseas swaps subject to the order and requests comment on the application of the costs and benefits of the rules in the context of extraterritoriality. In Cross-Border Litigation, three trade associations challenged the CFTC's 2013 Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations and requested the court to release 14 swap regulations in terms of overseas applications issued in July 2013. On September 16, 2014, the court granted summary judgment in favor of the CFTC and denied the plaintiffs relief; however it required the CFTC to supplement the 10 swaps regulations with a detailed analysis of associated costs and benefits. Comments are due by May 11, 2015.

The CFTC press release is available at: <http://www.cftc.gov/PressRoom/PressReleases/pr7134-15>.

The CFTC request for comment is available at:

<http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2015-05413a.pdf>.

## Enforcement

### Federal Reserve Board and Other Agencies Announce Civil Money Penalty and Cease and Desist Order Against Commerzbank

On March 12, 2015, the Federal Reserve Board announced a \$200 million civil money penalty and issued a cease and desist order against Commerzbank AG due to violations of the Bank Secrecy Act and other anti-money laundering laws, as well as certain US sanctions requirements. Commerzbank, along with its US branch, will be required to implement an enhanced global compliance program going forward. The Federal Reserve Board order is issued in conjunction with actions from the US Department of Justice, the US Department of Treasury's Office of Foreign Assets Control, the New York County District Attorney's Office, and the New York Department of Financial Services, with total fines totaling \$1.71 billion.

The Federal Reserve Board press release is available at:

<http://www.federalreserve.gov/newsevents/press/enforcement/20150312b.htm>.

## Financial Market Infrastructure

### Launch of New UK Payments System Regulator

On March 13, 2015, the FCA published a press release relating to its November 2014 consultation paper on the Payment Systems Regulator, which is the new UK regulator that will regulate the largest UK payment systems. The press release states that any of the directions mentioned in the consultation that were to come into force on April 1, 2015 will not

come into force until April 30, 2015. This is so that stakeholders have more time to consider the FCA's final directions and views that are to be published in the FCA's PSR policy statement before the end of March 2015.

The FCA press release is available at: <http://www.fca.org.uk/news/psr/psr-directions>.

### **Bank of England Publishes Annual Report on Supervision of Financial Market Infrastructures**

On March 11, 2015, the Bank of England published its annual report on the supervision of Financial Market Infrastructures which sets out the way in which the BoE has exercised its responsibilities in relation to recognized payment systems, CCPs and securities settlement systems over the past year. The report discusses the progress that has been achieved on issues including: (i) credit and liquidity risk; (ii) recovery and resolution; (iii) operational risk management; (iv) governance; and (v) disclosure. The report lists the forward-looking priorities that the bank intends to focus on in the next year, such as: (i) assessing the UK CCPs' stress-testing practices; (ii) evaluating proposals on CCP recovery and resolution that may extend to other types of FMI; (iii) addressing the root causes of excess operational risk; and (iv) improving resilience against cyber-attacks.

The report is available at: <http://www.bankofengland.co.uk/publications/Documents/fmi/annualreport2015.pdf>.

### **Review of CCP Stress Testing**

On March 11, 2015, the International Organization of Securities Commissions and Committee on Payments and Market Infrastructures jointly announced that they have begun a review of CCP stress testing. The aim of the review is to identify how the Principles for Financial Market Infrastructures standards published jointly by IOSCO and the CPMI in 2012 are being implemented, and whether any further guidance is needed.

The joint press release is available at: <http://www.iosco.org/news/pdf/IOSCONEWS372.pdf>.

## **Financial Services**

### **UK Regulator Publishes Timetable for Implementation of Markets in Financial Instruments Directive and Regulation**

On March 10, 2015, the FCA published an updated timetable relating to the implementation of the Markets in Financial Instruments Directive II and Markets in Financial Instruments Regulation. The timetable sets out the key dates for the implementation and transposition of the Directive and Regulation into domestic law. The deadline for transposing MiFID II into domestic law is July 3, 2016. MiFID II and MiFIR enter into force on January 3, 2017. The FCA aims to publish its main consultation paper on the implementation of MIFID II and MIFIR in December 2015. The final rules are to be published in June 2016.

The FCA's timetable is available on its dedicated webpage at: <http://www.fca.org.uk/firms/markets/international-markets/mifid-ii/mifid-review>.

## **Recovery & Resolution**

### **European Banking Authority Consults on Business Reorganization Plans Under the Bank Recovery and Resolution Directive**

On March 9, 2015, the EBA published a consultation paper on draft Regulatory Technical Standards and Guidelines on business reorganization plans under the Bank Recovery and Resolution Directive. Under the BRRD, a financial institution that has been resolved by a resolution authority must prepare a business reorganization plan that sets out the measures the financial institution will take to restore its viability and operability. The draft RTS set out the minimum requirements that must be included in the institution's business reorganization plan, such as the

identification of the causes of failure and financial performance projections. The Guidelines set out the criteria that resolution authorities must take into account when assessing and approving business reorganization plans, such as assessing the credibility and strategies of those plans. Comments on the consultation paper may be submitted until June 9, 2015.

The consultation paper is available at: <http://www.eba.europa.eu/regulation-and-policy/recovery-and-resolution/regulatory-technical-standards-and-guidelines-on-business-reorganisation-plans>.

### **UK HM Treasury Publishes Revised Special Resolution Regime Code of Practice**

On March 12, 2015, HM Treasury published its revised “Banking Act 2009 Special Resolution Regime Code of Practice”. The Code aims to encourage financial stability by resolving institutions such as banks, building societies and certain investment firms that are failing, and protecting depositors, taxpayers and the wider economy from the consequences of such failure. The Code has been amended to take into account the provisions of BRRD, and provides guidance on how special resolution tools are to be used by the relevant resolution authority. Section 1 of the Code sets out guidance relating to banking institutions whose failure has become highly likely, and includes: (i) five stabilization options including transfers of business to private sector purchasers or bridge entities; (ii) the bank’s insolvency procedure, facilitating prompt payouts to depositors via the Financial Services Compensation Scheme; and (iii) the bank administrative procedure, where a partial transfer of the business of a failing institution takes place. Section 2 of the Code deals with the SRR for CCPs, which are outside the scope of the BRRD. This section sets out guidance on how the relevant resolution authority can apply stabilization powers to CCPs, including powers to transfer: (i) some or all of the business of a CCP to a commercial purchaser or to a bridge CCP; and (ii) the ownership of the CCP to any person.

The SRR code of practice is available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/411563/banking\\_act\\_2009\\_code\\_of\\_practice\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/411563/banking_act_2009_code_of_practice_web.pdf).

### **Events**

March 17, 2015: Financial Services Committee of the US House of Representatives annual hearing on the state of the international financial system, featuring testimony by Treasury Secretary Lew.

March 19, 2015: Senate Banking Committee hearing to discuss the regulatory regime of regional banks. Federal Reserve Board Governor Tarullo, US Office of the Comptroller’s Curry, and FDIC Chairman Gruenberg will testify at the meeting.

March 19, 2015: Capital Markets Subcommittee of the US House of Representatives hearing on the SEC’s Division of Enforcement.

March 19, 2015: CFTC public roundtable on issues related to the recovery and orderly wind-down of Derivatives Clearing Organizations.

March 23, 2015: EBA public hearing on its proposals for prudential requirements for CSDs.

April 2, 2015: CFTC Market Risk Advisory Committee public meeting to discuss current risk management techniques employed by Derivatives Clearing Organizations and the structure of the derivatives markets.

April 8, 2015: EBA public hearing on the future of the IRB approach.

May 4 and May 8, 2015: EBA public hearing on Guidelines on sound remuneration policies.

May 8, 2015: EBA public hearing on financial contracts under the BRRD.

May 11, 2015: EBA public hearing on the Business Reorganization Plans under the BRRD.

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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