



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

UK Prudential Regulation Authority Consults on Further Rulebook Parts

On August 14, 2015, the Prudential Regulation Authority published a consultation paper on proposals to transfer additional parts of the PRA rules that are in the FS Handbook into the stand-alone PRA Rulebook. The PRA is reshaping the materials inherited from the Financial Services Authority to create a Rulebook which contains PRA rules only and follows the split of the old FSA into the PRA and the Financial Conduct Authority. The current consultation covers rules for financial conglomerates, third country groups, group risk and group systems and controls and regulatory reporting. The consultation closes on November 13, 2015. It is expected that the new online PRA Rulebook will be available before the end of 2015.

The consultation paper is available at:

<http://www.bankofengland.co.uk/pr/Documents/publications/cp/2015/cp2815.pdf>.

Competition

UK Payment Systems Regulator Publishes Guidance on its Concurrent Competition Powers

On August 13, 2015, the UK Payment Systems Regulator published final guidance on its concurrent competition powers and on its approach to market reviews. The PSR has concurrent competition powers with the Competition and Markets Authority. The final guidance on the PSR's powers and procedures under the Competition Act 1998, known as the CA98 Guidance, explains how the PSR will use its concurrent competition powers for participation in payment systems within the UK, in particular the enforcement processes it will follow and how they relate to its other powers and duties. The final guidance on the PSR's powers and procedures for market reviews, market studies and market investigation, known as its Markets Guidance, explains the PSR's powers to carry out market reviews, how the PSR will choose which powers to use, how the PSR will carry out market reviews and studies, including its approach to disclosure and use of information and how the PSR will make market investigation references.

The CA98 Guidance is available at:

https://www.psr.org.uk/sites/default/files/media/PDF/PSR_PS15_2.1_Competition_Act_CA98_Guidance.pdf and the

Markets Guidance is available at:

https://www.psr.org.uk/sites/default/files/media/PDF/PSR_PS15_2.2_Markets_Guidance.pdf.

Conduct and Culture

The Group of Thirty Releases Report on Banking Conduct and Culture

The Group of Thirty, a private, nonprofit, international group of senior representatives from the private and public sector, recently released a report entitled "Banking Conduct and Culture: A Call for Sustained and Comprehensive Reform". The report is the culmination of a year-long study, including nearly 80 interviews in 16 countries with central bankers, boards of directors and senior management. The report recommends a set of comprehensive reforms aimed at improving culture and conduct at banking organizations including addressing compensation, implementing an effective three lines of defense, changing staff recruiting and training methods, and increasing the involvement of boards of directors and senior management in addressing cultural issues at their firms.

The report is available at: <http://group30.org/images/PDF/BankingConductandCulture.pdf>

Corporate Governance

UK Regulators Publish Near-Final Rules on Senior Managers and Certification Regime for Non-UK Banks

On August 13, 2015, the PRA and the FCA published near-final rules on the Senior Manager and Certification regime for UK branches of EEA and non-EEA banks and PRA-designated investment firms. The new rules for all UK firms and branches of non-UK firms come into effect on March 7, 2016. Firms must notify the regulators by February 8, 2016 as to which individuals will be senior managers under the new regime. The regulators cannot make final rules until related legislation has been passed later this year. However, to give non-UK firms as much time as possible to implement the required changes, the regulators have decided to publish the near-final rules now. Amongst the changes included in the near-final rules are: (i) replacement of the FCA Overseas Branch Senior Management function with a new Executive Director function and a new Other Local Responsibility function; (ii) revised FCA guidance on remote booking; and (iii) clarifications on when an individual located outside of the UK who is involved in the activities of the branch might need to become approved as a senior manager.

The PRA's Policy Statement is available at:

<http://www.bankofengland.co.uk/pr/Documents/publications/ps/2015/ps2015.pdf> and the FCA's Feedback Statement is available at: <http://www.fca.org.uk/static/documents/feedback-statements/fs15-03.pdf>.

Derivatives

US Commodity Futures Trading Commission Again Extends Relief from Certain Transaction-Level Requirements for Non-US Swap Dealers

On August 13, 2015, the Commodity Futures Trading Commission issued a time-limited no-action letter, again extending relief to non-US swap dealers registered with the CFTC from certain transaction-level requirements under the Commodity Exchange Act. This extension builds on similar relief previously granted by the CFTC in 2014 and provides that the CFTC will not take an enforcement action against non-US swap dealers for failure to comply with the specified transaction-level requirements. Subject to the limitations laid out, the relief is effective until the earlier of September 30, 2016 or the effective date of any CFTC action with respect to relief for non-US swap dealers from certain transaction-level requirements.

The press release is available at: <http://www.cftc.gov/PressRoom/PressReleases/pr7211-15>.

European Securities and Markets Authority Makes Recommendations under the EMIR Review

On August 13, 2015, the European Securities and Markets Authority published four reports which make recommendations for improving the framework of the European Market Infrastructure Regulation. The reports provide ESMA's input into the European Commission's review of EMIR. ESMA makes the following recommendations, amongst others: (i) streamlining the process for determining clearing obligations; (ii) introduction of a mechanism to temporarily suspend the clearing obligation; (iii) removal of the frontloading requirement; (iv) reconfiguration of the exemptions for intragroup transactions; (v) replacement of the current system for equivalence determinations for third country CCPs with a system based on Regulatory Technical Standards which includes powers to deny or suspend the recognition of a third country CCP; (vi) clarification of when new activities and services are not covered by a CCP's initial authorization; (vii) granting ESMA increased supervisory and enforcement powers over trade repositories; (viii) the identification of quasi-financial entities, for example, hedge funds or some alternative investment funds, to prevent confusion with other non-financial counterparties, such as corporates; (ix) further details on the rules for implementing the counter-cyclical tools adopted by CCPs for margins and collateral; and (x) clarification of the provisions on segregation and portability by RTS.

ESMA's reports are available at: <http://www.esma.europa.eu/news/ESMA-recommends-changes-EMIR-framework?t=326&o=home>.

Enforcement

US Consumer Financial Protection Bureau, US Office of the Comptroller of the Currency and US Federal Deposit Insurance Corporation Announce Enforcement Actions Against Citizens Bank

On August 12, 2015, the Consumer Financial Protection Bureau, Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation each issued enforcement actions against various Citizens Bank entities for unfair and deceptive and unsafe and unsound practices relating to the processes by which the bank reconciled discrepancies between amounts shown on deposit tickets and the actual amount of items submitted for deposit in violation of Section 5 of the Federal Trade Commission Act and other applicable laws. The enforcement actions impose civil money penalties on Citizens Bank and order the various entities to make restitution to affected customers and businesses as well as take certain other remedial corporate governance and other compliance-related actions.

The OCC consent order against Citizens Bank, N.A. is available at: <http://www.occ.gov/static/enforcement-actions/ea2015-088.pdf>.

The CFPB consent order against Citizens Bank, N.A., Citizens Financial Group, Inc. and Citizens Bank of Pennsylvania is available at: http://files.consumerfinance.gov/f/201408_cfpb_consent-order-rbs-citizens.pdf.

The FDIC consent order against Citizens Bank of Pennsylvania is available at: <https://www.fdic.gov/news/news/press/2015/pr15066a.pdf>.

UK High Court Issues Injunction and Penalties for Market Abuse

On August 12, 2015, the High Court of Justice, Chancery Division issued a judgment granting a permanent injunction to prohibit market abuse and imposing fines amounting to £7,750,000 against Da Vinci Invest Ltd and Mineworld Ltd as well as individual traders Szabolcs Banya, Gyorgy Szabolcs Brad and Tamas Pornye. Four of the five defendants were resident or incorporated abroad. The defendants were found to have committed market abuse in 2010 and 2011 using a trading tactic called “layering” or “spoofing,” which enabled them to trade UK-listed shares at artificial prices. This is the first time that the FCA has asked the High Court to impose a permanent injunction for market abuse and to impose a penalty. Usually, the FCA would impose any penalty for market abuse.

The judgment is available at: <http://www.bailii.org/ew/cases/EWHC/Ch/2015/2401.html> and the FCA's press release is available at: <http://www.fca.org.uk/news/fca-secures-high-court-judgment-awarding-injunction-and-over-7-million-in-penalties>.

Recovery & Resolution

European Banking Authority Advice on Protections for Certain Arrangements in a Partial Property Transfer

On August 14, 2015, the European Banking Authority published technical advice to the European Commission under the Bank Recovery and Resolution Directive on the classes of arrangements to be protected in a partial property transfer. A partial property transfer occurs when some but not all of the assets, rights and liabilities of a failing firm are transferred to a new entity. Under the BRRD, the European Commission must adopt legislation that specifies which arrangements must be safeguarded to prevent linked liabilities, rights and contracts of a failing firm from being split in a partial property transfer. The EBA advises that a list of arrangements is not feasible because it would need to be exhaustive to capture the different legal frameworks in Member States, in particular, insolvency laws as well as any future developments. Instead, the EBA specifies the arrangements according to rules and definitions in a more specific way than the provisions of the BRRD itself. The criteria for whether an arrangement is within scope of the protection

include the type, scope, economic purpose, the counterparties and the governing law of the arrangements. The EBA also recommends distinguishing between a core category of arrangements that should be protected in any event and others where the protection would depend on additional criteria and the specific circumstances. The EBA also advises that certain arrangements that would impair the feasibility of a partial property transfer resolution strategy should be excluded from protection. Finally, the EBA considers that where the BRRD text is unclear, resolution authorities should have the power to interpret the scope of the safeguards restrictively.

The EBA's advice is available at: <http://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-15+Opinion+on+protected+arrangements.pdf>.

People

Greg Coleman Named Deputy Comptroller for Large Bank Supervision

On August 11, 2015, the OCC assigned Greg Coleman the role of Deputy Comptroller for Large Bank Supervision. Mr. Coleman joined the OCC in 1989 and became a commissioned national bank examiner in 1994. In his new role, Mr. Coleman joins three other Deputies for Large Bank Supervision and the Deputy Comptroller for International Banking Supervision in overseeing the large complex financial institutions subject to supervision by the OCC.

The OCC press release is available at: <http://www.occ.gov/news-issuances/news-releases/2015/nr-occ-2015-112.html>.

Amrit Sekhon Named Deputy Comptroller for Capital and Regulatory Policy

On August 13, 2015, Amrit Sekhon was named the OCC's Deputy Comptroller for Capital and Regulatory Policy from October 4, 2015. Mr. Sekhon joined the OCC in 1998 and most recently served as Director for Capital Policy, overseeing the implementation of the Dodd-Frank capital and leverage rules. In his new role, Mr. Sekhon will be the key advisor to Comptroller Curry on domestic and international policies on bank capital. He will further serve as the OCC's representative for Basel Committee meetings.

The press release is available at: <http://www.occ.gov/news-issuances/news-releases/2015/nr-occ-2015-114.html>.

US CFTC Commission Commissioner Mark P. Wetjen Announces his Resignation

On August 14, 2015, Commissioner Mark P. Wetjen announced his resignation from the US CFTC, effective August 28, 2015. During his time as Commissioner, Mr. Wetjen played a significant role in implementing the Dodd-Frank Act, including the implementation of the first trading mandate for interest rate and credit default swaps.

The press release is available at: <http://www.cftc.gov/PressRoom/PressReleases/pr7212-15>.

European Stability Mechanism New Appointment

On August 14, 2015, the European Stability Mechanism announced the appointment of Juan Rojas as Head of Economics and Market Analysis.

The press release is available at: <http://www.esm.europa.eu/press/releases/esm-appoints-juan-rojas-as-head-of-economics-and-market-analysis.htm>.

Upcoming Events

August 20, 2015: EBA Public Hearing on guidelines for the prudential assessment of acquisitions of qualifying holdings in the financial sector (registration closed).

September 1, 2015: EBA Public Hearing on conditions for national regulators to raise risk weights and loss given default floors for mortgage exposures (registration closed).

September 4, 2015: EBA Public Hearing on Call for Evidence on bank lending to Small and Medium-sized Enterprises and the capital reduction factor for loans to SMEs known as the Supporting Factor (registration closed).

September 8, 2015: Agency for the Cooperation of Energy Regulators public workshop on the implementation of the Regulation on Energy Market Integrity and Transparency and disclosure of inside information (registration deadline: September 4, 2015).

September 23, 2015: FCA and Organization for Economic Co-operation and Development conference to discuss practical regulation, research and policy for consumer financial protection (registration closed).

September 24, 2015: European Central Bank information session on TARGET2-Securities.

October 7, 2015: EBA Public Hearing on proposed guidelines on cooperation agreements between deposit guarantee schemes (registration deadline: September 16, 2015).

October 12, 2015: EBA Public Hearing on CVA exemption of NFCs established in a third country (registration deadline: September 21, 2015).

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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