



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

Delegated Regulations on Regulatory Technical Standards under the Capital Requirements Regulation Published in Official Journal of the European Union

On September 19, 2015, two delegated regulations on Regulatory Technical Standards under the Capital Requirements Regulation were published in the Official Journal of the European Union:

1. The delegated regulation for the disclosure of information for the compliance of institutions with the requirement for a countercyclical capital buffer which sets out the specifications for the disclosures required by firms for compliance with their requirements for a countercyclical capital buffer; and
2. The delegated regulation for the transitional treatment of equity exposures under the Internal Ratings-Based approach which states that national regulators may grant certain firms with exemptions from the IRB treatment where the categories of the firm's equity exposures were already benefiting from an exemption from the IRB treatment on December 31, 2013.

Both delegated regulations enter into force on October 9, 2015.

The delegated regulations are available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.244.01.0001.01.ENG; and http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.244.01.0009.01.ENG.

Bank Structural Reform

US Federal Deposit Insurance Corporation Chairman Martin J. Gruenberg Gives Remarks at the FDIC Banking Research Conference on the Orderly Failure of Large, Complex, Systemically Important Financial Institutions

On September 17, 2015, US Federal Deposit Insurance Corporation Chairman, Martin J. Gruenberg, gave a speech at the FDIC Banking Research Conference outlining the progress made by the FDIC to date in instituting a framework under the Dodd-Frank Act for the orderly failure of large, complex, systemically important financial institutions. Among other topics, the speech addressed the FDIC's efforts to use the living will process to improve resolvability of firms under the US Bankruptcy Code, and the FDIC's progress in developing the operational capabilities to carry out a resolution under the Orderly Liquidation Authority, a public-sector bankruptcy process prescribed by the Dodd Frank Act for institutions whose resolution under the US Bankruptcy Code would pose systemic concerns. Chairman Gruenberg asserted that using the living will process to bring about changes in the structure and operations of firms to facilitate orderly resolution under bankruptcy is a statutory mandate of the FDIC, as well as being prepared to use the powers available under the Orderly Liquidation Authority to manage the orderly failure of a firm. These remarks echoed previous statements given by Chairman Gruenberg when speaking in front of the Peterson Institute for International Economics in May 2015.

The speech is available at: <https://www.fdic.gov/news/news/speeches/spsep1715.html>.

UK Regulators Publish Consultation on Implementation of Ring-Fencing Transfer Schemes

On September 18, 2015, the Prudential Regulation Authority and Financial Conduct Authority both issued consultations on the implementation of Ring-Fencing Transfer Schemes under the UK's ring-fencing regime. Banks with core deposits over £25 billion over a period of three years are expected to comply with ring-fencing requirements from January 1, 2019, separating the retail arms of banks from their riskier investment banking operations. RFTSs enable some or all of a bank's business to be transferred to another body so that the bank can restructure to comply with the ring-fencing rules. A scheme report, which must comment on whether the scheme could have any adverse effect on third parties, must be prepared by a skilled person approved by the PRA and FCA. The scheme report is intended to assist the court in its decision whether to sanction the scheme. Consent from all parties that may be affected by the

transfer is not required but third parties affected by the proposed scheme may make representations to the court. The PRA must also consult the FCA before approving a skilled person or a scheme report. The PRA will also issue two certificates: one providing its consent to the scheme and the second to verify that the transferee will have adequate financial resources. Where the transferee is only regulated by the FCA, the FCA must issue the financial resources certificate. The PRA seeks views on its draft Statement of Policy on the PRA's approach to RFTSs and on its proposed approach for the approval of skilled persons and scheme reports. The FCA seeks views on its draft general guidance on RFTSs. Comments on both consultations are due by October 30, 2015.

The PRA consultation is available at: <http://www.bankofengland.co.uk/pr/Documents/publications/cp/2015/cp3315.pdf> and the FCA consultation is available at: <http://www.fca.org.uk/static/documents/guidance-consultations/gc15-05.pdf>.

Corporate Governance

UK Regulators Consult on Amendments to Forms under New Senior Managers Regime and Current Approved Persons Regime

On September 18, 2015, the FCA and PRA published a joint consultation paper on proposed changes to certain forms used by firms and individuals under the incoming Senior Managers Regime and current Approved Persons Regime. The consultation seeks views on proposed changes to two forms for the new SMR and two forms for the current APR regime. The proposed changes would modify the required disclosures required by individuals relating to ongoing investigations and past convictions, according to whether the individual will be a senior manager under the SMR or an approved person under the APR and allow the regulators to assess fitness and propriety appropriately. Other forms for which the regulators have no duty to consult on have also been amended with immediate effect, including Long Form A forms and Notifications for Change in Controller. Comments are due by October 19, 2015. The regulators intend to publish the revised forms before the end of 2015 and guidance notes on completing the forms for the Senior Managers Regime are also expected.

The consultation paper is available at: <http://www.fca.org.uk/static/fca/documents/consultation-papers/cp15-29.pdf>.

Derivatives

The US Commodity Futures Trading Commission Issues Interpretation Clarifying the Consistency between CFTC Regulations Applicable to Derivatives Clearing Organizations and the Principles for Financial Market Infrastructures

On September 18, 2015, the US Commodity Futures Trading Commission's Division of Clearing and Risk released an interpretation clarifying the consistency of the CFTC's Part 39 regulations pertinent to certain derivatives clearing organizations with the CPMI-IOSCO Principles for Financial Market Infrastructures. The clarification relates to certain risk management standards which, among other things, address risks associated with the following: exchange-of-value settlement services; link arrangements of DCOs; the requirement to use central bank services, where available and practicable; and requirements regarding the due diligence conducted with respect to custodian banks.

In the guidance, the CFTC interprets the relevant Part 39 regulations, which apply to systemically important DCOs and those DCOs that have opted into an enhanced regulatory framework (known as Subpart C DCOs), to incorporate all of the standards set forth in the PFMIs.

The CFTC staff interpretation is available at:

<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/15-50.pdf>.

The US Commodity Futures Trading Commission Issues Interpretative Guidance Regarding the Use of a "Firm or Forced Trades" Process by Derivatives Clearing Organizations

On September 18, 2015, the CFTC's Division of Market Oversight and Division of Clearing and Risk jointly published an interpretive letter stating that the use by a DCO of a "firm or forced trades" process to determine the price of certain

swaps for which public market prices are not available, does not, by itself, trigger the requirement for the DCO to register as a swap execution facility.

In addition, the CFTC interpretive letter states that the DCO should be the reporting counterparty for swaps created by the firm or forced trades process for purposes of Part 45 of the CFTC's regulations.

The CFTC Staff Letter is available at:

<http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/15-51.pdf>.

The US Commodity Futures Trading Commission Orders Australia and New Zealand Banking Group Ltd. to Pay a \$150,000 Penalty for Inaccurate Large Trader Reports for Physical Commodity Swap Positions

On September 17, 2015, the CFTC issued an Order filing and settling charges against Australia and New Zealand Banking Group Ltd. ("ANZ"), an Australia-based financial services company. The CFTC Order fined ANZ \$150,000 for violations of Section 4s(f) of the Commodity Exchange Act and CFTC Regulations 20.4 and 20.7 by failing to comply with its obligation to submit accurate large trader reports for physical commodity swap positions. This is the CFTC's first case enforcing the new Dodd-Frank Act large trader reporting requirements for physical commodity swap positions pursuant to Section 4s(f) of the CEA and Part 20 of the CFTC's Regulations.

The CFTC press release is available at: <http://www.cftc.gov/PressRoom/PressReleases/pr7233-15>.

The CFTC Order is available at:

<http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfaustraliaorder091715.pdf>.

The US Commodity Futures Trading Commission Orders Bitcoin Options Trading Platform Operator and its CEO to Cease Illegally Offering Bitcoin Options and to Cease Operating a Facility for Trading or Processing of Swaps without Registering

On September 17, 2015, the CFTC issued an Order filing and settling charges against Coinflip, Inc., a San Francisco based company, and its chief executive officer, Francisco Riordan, for conducting activity related to commodity options transactions in violation of the Commodity Exchange Act rules and CFTC Regulations. In the Order, the CFTC found for the first time that Bitcoin and other virtual currencies are properly defined as commodities covered by the CEA. The Order found that Coinflip and Riordan operated a facility for the trading or processing of commodity options without complying with the CEA or CFTC Regulations. The Order requires Coinflip and Riordan to cease and desist from further violations of the CEA and CFTC Regulations, as charged, and to comply with specified undertakings.

The press release is available at: <http://www.cftc.gov/PressRoom/PressReleases/pr7231-15>.

The Order is available at:

<http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/encoinfliporder09172015.pdf>.

US Commodity Futures Trading Commission Proposes Amendments to the Definition of "Material Terms" for Purposes of Swap Portfolio Reconciliation

On September 15, 2015, the CFTC announced proposed amendments to the definition of "material terms" under CFTC regulations relating to swap portfolio reconciliation.

CFTC regulations on swap portfolio reconciliation require swap dealers and major swap participants to reconcile swap terms with other SDs or MSPs daily, weekly, or quarterly, depending upon the size of the particular swap portfolio. These regulations also require SDs and MSPs to provide non-SD and non-MSP counterparties with regular opportunities for portfolio reconciliation.

Under the new proposal, the CFTC would amend the definition of "material terms" to specifically exclude certain data fields from the periodic reconciliation requirements. If the proposed amendment to the definition of "material terms" is adopted, the adopted rule would supersede similar no-action relief provided pursuant to CFTC Letter 13-31 issued on June 26, 2013.

In separate statements, CFTC Commissioner, J. Christopher Giancarlo, and CFTC Chairman, Timothy Massad, praised the proposal for eliminating unnecessary burdens in the swap portfolio reconciliation rules. In addition, Commissioner Giancarlo encouraged parties affected by the swap reconciliation rules to submit comments regarding the ongoing costs associated with the reconciliation of other data fields that may not be relevant to the ongoing rights and obligations of the parties to a swap.

The comment period ends 60 days after the proposal's publication in the Federal Register.

The CFTC proposed rule is available at:

<http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister091515.pdf>.

Extension of Exemption from EU Clearing Obligation for Pension Funds

On September 15, 2015, a Commission Delegated Regulation was published in the Official Journal of the European Union which extends the transitional exemption period under the European Market Infrastructure Regulation for pension funds to comply with the EU clearing obligation by two years. The European Commission announced on June 5, 2015, that the period would be extended from August 16, 2015 to August 16, 2017, noting that if pension funds were subject to the clearing obligation now, they would need to source cash for the margin requirements of CCPs. The Commission, and other EU regulators, have asked CCPs to develop a solution that would allow pension funds to clear derivatives without the obligation being too burdensome for pension funds but which will also allow CCPs to liquidate positions rapidly in the event of a default. To date, no solution has been confirmed.

The Commission Delegated Regulation is available at:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.239.01.0063.01.ENG.

Industry Launches Derivatives Product Identification Initiative

On September 17, 2015, the International Swaps and Derivatives Association, Inc. announced the launch of a new industry data project which will develop an open-source standard derivatives product identification system that can be applied across different types of financial market infrastructure, such as trading venues, clearing houses and trade repositories. The initiative is in response to the derivatives reporting requirements which are imposed in various jurisdictions, including the US and EU. ISDA's new Symbology Governance Committee will provide oversight and governance to ensure that the product identification standard meets both industry and regulatory requirements. Eighteen entities (subject to finalization of contracts), have signed up to the project so far.

The ISDA press release is available at:

<http://www2.isda.org/news/isda-launches-new-industry-initiative-for-a-derivatives-product-identification-standard>.

Financial Services

UK Regulator Publishes Guides on its New Approach for Supervision of Fixed and Flexible Portfolio Firms

On September 18, 2015, the Financial Conduct Authority published two guides which set out its new approach to classification of firms for conduct supervision. Firms will now be classified as either flexible or fixed portfolio firms according to their size, market presence and customer footprint. Fixed portfolio firms require the highest level of supervision and are the smaller of the population of firms. The guides summarize the FCA's approach that will apply to the two different kinds of firms. The revisions aim to help the FCA to take a more sector-based approach to identifying risk and engaging more widely with market representatives.

The guide for fixed portfolio firms is available at: <http://www.fca.org.uk/static/documents/corporate/supervision-guide-fixed.pdf>; and the guide for flexible portfolio firms is available at:

<http://www.fca.org.uk/static/documents/corporate/supervision-guide-flexible.pdf>.

Funds

US Securities and Exchange Commission Removes References to Credit Ratings in Money Market Fund Rule and Form

On September 16, 2015, the US Securities and Exchange Commission adopted amendments pursuant to Section 939A of the Dodd-Frank Act Wall Street Reform and Consumer Protection Act to SEC rule 2a-7, related to the removal of credit rating references in the rule. Rule 2a-7 is the principal rule that governs money market funds.

The amendments to rule 2a-7 would eliminate provisions which currently require money market funds to invest only in securities that have received one of the two highest short-term credit ratings or, if they are not rated, securities that are of comparable quality. In addition, under the amended rule, money market funds would also no longer be required to invest at least 97 percent of their assets in securities that have received the highest short-term credit rating. Instead, the amended rule would limit money market funds to investing in a security only if the fund determines that the security presents minimal credit risks after analyzing certain prescribed factors, which factors are discussed in more detail in the adopting release.

The SEC adopted additional amendments to rule 2a-7 that would subject additional securities to issuer diversification provisions in the money market fund rule by eliminating a current exclusion for securities subject to a guarantee issued by a non-controlled person.

The SEC press release is available at: <http://www.sec.gov/news/pressrelease/2015-193.html> and the text of the final rule is available at: <http://www.sec.gov/rules/final/2015/ic-31828.pdf>.

European Securities and Markets Authority Publishes Final Report and Draft Implementing Technical Standards on Penalties under UCITS V

On September 18, 2015, the European Securities and Markets Authority published a final report on draft Implementing Technical Standards on the procedures and forms for submitting information on penalties and measures under the UCITS V Directive. The draft ITS have been submitted to the European Commission for endorsement. National regulators will be required to provide ESMA with aggregated information on an annual basis of all penalties and measures that they have imposed on individuals and companies for breaches under UCITS V. Measures and penalties disclosed by national regulators to the general public must also be reported to ESMA simultaneously. The draft ITS include the relevant form that is to be submitted to ESMA. Member States must implement UCITS V into national law by March 18, 2016.

The final report is available at: http://www.esma.europa.eu/system/files/2015-esma-1409_its_penalties_and_measures_under_ucits_v.pdf.

Securities

International Organization of Securities Commissions Publishes Final Report on Cross-Border Regulation in the Securities Markets

On September 17, 2015, the International Organization of Securities Commissions published a final report on the cross-border regulation of the global securities markets. The report sets out the cross-border regulatory toolkit of regulatory options available to national securities regulators, including an analysis of the approaches taken to cross-border regulation and the impact that the use of such cross-border regulatory tools may have on investor protection, markets and systemic risk. The tools that are used are classified into national treatment, recognition, and passporting. IOSCO undertook a survey of member jurisdictions to identify the tools that members currently use to regulate financial activities in the global securities markets. The report also sets out next steps for IOSCO, including considering (i) how to be more explicit in incorporating cross-border issues into its policy work; (ii) organizing workshops for regulators on the process and considerations for assessing foreign regulatory regimes under unilateral and mutual recognition or otherwise develop better understanding of the complex aspects of cross-border regulation;

(iii) setting up an information repository of its members supervisory cooperation agreements; and (iv) setting up an information repository for recognition decisions, including the analyses that informed such decisions.

The IOSCO report is available at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD507.pdf>.

People

Sarah Dahlgren Steps Down as Head of Financial Institution Supervision Group

On September 17, 2015, the Federal Reserve Bank of New York announced that Sarah Dahlgren stepped down as head of the Financial Institution Supervision Group. James Hennessy was named interim head of the Financial Institution Supervision Group.

Financial Conduct Authority and Payment Systems Regulator Boards Appoint New Committee Members

On September 21, 2015, the FCA published a press release announcing that the FCA and Payment Systems Regulator has appointed new members to its decision making committees. The FCA's Regulatory Decisions Committee will welcome Tim Parkes as Chair, Elizabeth France and John Hull as Deputy Chairs and Kevin Brown, Caroline Ramsay and Chris Cummings as members. The PSR's Enforcement Decisions Committee will also welcome Tim Parkes as Chair, Elizabeth France as Deputy Chair and Kevin Brown, Chris Cummings, Stuart McIntosh, Professor Robin Mason, Malcolm Nicholson, Caroline Ramsay and Jonathan Haskel as members. The FCA and PSR Competition Decisions Committee will welcome Jonathan Haskel, Stuart McIntosh, Professor Robin Mason and Malcolm Nicholson as members.

Upcoming Events

September 17, 2015: US House of Representatives Committee on Financial Services hearing entitled "The Dodd Frank Act Five Years Later: Are We More Free?"

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.

September 28, 29 and 30, 2015: FCA workshop for Credit Unions: Senior Managers and Certification Regimes Improving Individual Accountability.

October 1, 12, 13, 19, 20 and 21, 2015: FCA workshop for Credit Unions: Senior Managers and Certification Regimes Improving Individual Accountability.

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).

October 15, 2015: EBA Public Hearing on the report on the calibration of a stable funding requirement under the Capital Requirements Regulation (registration deadline: September 25, 2015).

October 19, 2015: FCA MiFID II Wholesale Firms conference.

November 3, 4, 5, 9 and 11, 2015: FCA workshop for Credit Unions: Senior Managers and Certification Regimes Improving Individual Accountability.

November 11, 2015: Bank of England Open Forum.

November 18 and 19, 2015: EBA Fourth Annual Research Workshop – Financial regulation and the real economy: a micro prudential perspective.

Upcoming Consultation Deadlines

September 23, 2015: IOSCO Consultation on International Regulatory Standards on Fees and Expenses on Investment Funds

September 23, 2015: PSR Survey on Payment Service Providers and Indirect Payment Systems

September 24, 2015: Federal Reserve Board Proposed Rule to Modify Capital Planning and Stress Testing Regulations

September 25, 2015: FCA Discussion Paper on Delivering Smarter Communications to Consumers

September 28, 2015: US Federal Financial Institutions Examination Council Proposals on Reporting for Foreign Branches of US Banks and Savings Associations

September 30, 2015: Joint PRA and FCA Consultation on New Rules for Regulating Credit Unions

September 30, 2015: Input Sought for Development of a Global Unique Transaction Identifier

September 30, 2015: ESMA Consultation on CCP Time Horizon for Liquidation Period

October 5, 2015: FCA Consultation on Part II of Implementation of UCITS V Directive

October 9, 2015: CPMI and IOSCO Consultation on Harmonization of Key OTC Derivatives Data Elements

October 19, 2015: Federal Reserve Board Proposed Revisions to Systemic Risk Reporting by Large Bank Holding Companies

October 30, 2015: PRA and FCA Consultations on implementation of ring-fencing transfer schemes

October 31, 2015: ESMA Consultation on draft Implementing Technical Standards under MiFID II and MiFIR

November 9, 2015: FCA Consultation on Part I of Implementation of UCITS V Directive

December 7, 2015: FCA Consultation on Part III of Implementation of UCITS V Directive

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:

Contacts



BARNEY REYNOLDS
T: +44 20 7655 5528
barney.reynolds@shearman.com
London



REENA AGRAWAL SAHNI
T: +1 212 848 7324
reena.sahni@shearman.com
New York



RUSSELL D. SACKS
T: +1 212 848 7585
rsacks@shearman.com
New York



THOMAS DONEGAN
T: +44 20 7655 5566
thomas.donegan@shearman.com
London



DONNA M. PARISI
T: +1 212 848 7367
dparisi@shearman.com
New York



NATHAN J. GREENE
T: +1 212 848 4668
ngreene@shearman.com
New York



GEOFFREY B. GOLDMAN
T: +1 212 848 4867
geoffrey.goldman@shearman.com
New York



JOHN ADAMS
T: +44 20 7655 5740
john.adams@shearman.com
London

AATIF AHMAD
T: +44 20 7655 5120
aatif.ahmad@shearman.com
London

AZAD ALI
T: +44 20 7655 5659
azad.ali@shearman.com
London

CHRISTINA BROCH
T: +1 202 508 8028
christina.broch@shearman.com
Washington, DC

MARTYNA BUDZYNSKA
T: +44 20 7655 5816
martyna.budzynska@shearman.com
London

TIMOTHY J. BYRNE
T: +1 212 848 7476
tim.byrne@shearman.com
New York

JAMES CAMPBELL
T: +44 20 7655 5570
james.campbell@shearman.com
London

AYSURIA CHANG
T: +44 20 7655 5792
aysuria.chang@shearman.com
London

TOBIA CROFF
T: +39 02 0064 1509
tobia.croff@shearman.com
Milan

ANNA DOYLE
T: +44 20 7655 5978
anna.doyle@shearman.com
London

SYLVIA FAVRETTO
T: +1 202 508 8176
sylvia.favretto@shearman.com
Washington, DC

MAK JUDGE
T: +65 6230 8901
mak.judge@shearman.com
Singapore

DONALD N. LAMSON
T: +1 202 508 8130
donald.lamson@shearman.com
Washington, DC

HERVÉ LETRÉGUILLY
T: +33 1 53 89 71 30
hletreguilly@shearman.com
Paris

OLIVER LINCH
T: +44 20 7655 5715
oliver.linch@shearman.com
London

BEN MCMURDO
T: +44 207 655 5906
ben.mcmurdo@shearman.com
London

JENNIFER D. MORTON
T: +1 212 848 5187
jennifer.morton@shearman.com
New York

BILL MURDIE
T: +44 20 7655 5149
bill.murdie@shearman.com
London

BRADLEY K. SABEL
T: +1 212 848 8410
bsabel@shearman.com
New York

JENNIFER SCOTT
T: +1 212 848 4573
jennifer.scott@shearman.com
New York

KOLJA STEHL
T: +49 69 9711 1623
kolja.stehl@shearman.com
Frankfurt / London

ELLERINA TEO
T: +44 20 7655 5070
ellerina.teo@shearman.com
London

ABU DHABI | BEIJING | BRUSSELS | DUBAI | FRANKFURT | HONG KONG | LONDON | MENLO PARK | MILAN | NEW YORK
PARIS | ROME | SAN FRANCISCO | SÃO PAULO | SAUDI ARABIA* | SHANGHAI | SINGAPORE | TOKYO | TORONTO | WASHINGTON, DC

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