



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

US Banking Agencies Approve Bank of America to Begin Using Advanced Approaches Framework to Calculate Risk-Based Capital Requirements

On September 3, 2015, the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency announced their approval of Bank of America and its subsidiary national banks to use the “advanced approaches” capital framework. The advanced approaches framework requires banks to meet certain criteria for risk-measurement and risk-management when calculating risk-based capital standards as developed by the Basel Committee on Banking Supervision. In order to use the advanced approaches framework, banks are required to conduct a satisfactory “parallel run” under the framework in order to show the relevant regulators that the bank is able to comply with the framework for at least four consecutive calendar quarters. Bank of America, along with its subsidiary national banks, fulfilled the parallel run requirement and will begin using the advanced approaches framework to calculate and disclose their risk-based capital measures beginning in the fourth quarter of 2015.

The FRB press release is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/20150903a.htm> and the OCC press release is available at: <http://www.occ.gov/news-issuances/news-releases/2015/nr-ia-2015-122.html>.

Cyber Security

US Deputy Comptroller Discusses Cybersecurity

On August 31, 2015, the OCC’s Deputy Comptroller for Compliance Operations and Policy, Grovetta Gardineer, discussed the cybersecurity assessment tool issued by the Federal Financial Institutions Examination Council in June 2015. According to Gardineer, the tool provides a common framework for assessment across institutions and represents a step forward in terms of supervision of banks and thrifts in cybersecurity. While the use of the cybersecurity tool is optional for financial institutions, it will be used by OCC examiners to supplement their exam work and to obtain a stronger and more complete understanding of the cybersecurity risks faced by financial institutions.

The press release is available at: <http://www.occ.gov/news-issuances/news-releases/2015/nr-occ-2015-120.html> and the remarks are available at: <http://www.occ.gov/news-issuances/speeches/2015/pub-speech-2015-120.pdf>.

Derivatives

Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions Consult on Harmonization of Key OTC Derivatives Data Elements

On September 2, 2015, the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions published a consultative report on the harmonization of a first batch of key OTC derivatives data elements, focusing on key data considered to be important for consistent and meaningful aggregation on a global basis, as OTC derivatives become required to be reported to trade repositories in many jurisdictions globally. The consultation seeks views on matters including: (i) proposed definitions of key data elements; (ii) whether the proposed definitions cover different market practices globally; and (iii) whether any alternative approaches to those mentioned in the report would better achieve the goals of the report. Comments are due by October 9, 2015.

The report is available at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD503.pdf>.

Financial Market Infrastructure

Payments UK Publishes Voluntary Code of Conduct for Indirect Access Providers

On September 1, 2015, Payments UK, the trade group representing the payments industry in the UK, published a voluntary code of conduct setting out standards of best practice aiming to improve indirect access to UK payment

systems for payment service providers and setting out the responsibilities of indirect access providers who subscribe to the code. The code was developed further to a policy statement published by the UK Payment Systems Regulator in March 2015 and in association with the PSR and the industry's primary indirect access providers, which are Barclays Bank plc, HSBC, Lloyds Banking Group and the Royal Bank of Scotland plc. These four banks intend to subscribe to the code by September 30, 2015 and others may subscribe from September 1, 2015 via self-certification. The code commitments include: (i) entitlement to an agreement for the supply of indirect access; (ii) communication of important information such as technical specifications, security access requirements, operation, availability and service performance levels; and (iii) management and safeguarding of the supply of services, for example, when a party decides to terminate the agreement or to migrate services to become a direct participant in a UK payment system.

The Code of Conduct is available at:

<http://www.accesstopaymentsystems.co.uk/sites/default/files/documents/Code%20of%20Conduct%20for%20Indirect%20Access%20Providers%20%28Interim%29.pdf>.

Financial Services

G20 Communiqué and Update on Financial Reforms

On September 4 and 5, 2015, the G20 Finance Ministers and Central Bank Governors issued a communiqué highlighting the actions required to achieve the goals of the G20 for this year. The group endorses the Organisation for Economic Cooperation and Development Principles on Corporate Governance, welcomes the progress made on the principles on SME financing and aims to finalize remaining elements of the global financial reform agenda this year. In addition, the OECD published a report prepared by the Financial Stability Board on corporate funding structures and incentives. The report sets out: (i) the growth and differences across countries and regions in nonfinancial corporate debt since the financial crisis; (ii) insights into the incentives that are influencing these trends; (iii) associated financial stability concerns; (iv) the role of macroprudential policies; and (v) potential action and next steps that could be taken, such as the use of macro-prudential tools to moderate the risks of corporate leverage growth.

The communiqué is available at: <https://g20.org/wp-content/uploads/2015/09/September-FMCEBG-Communique.pdf>, the principles of corporate governance are available at:

<http://www.oecd.org/g20/topics/financing-for-investment/Corporate-Governance-Principles-ENG.pdf>, the progress report on principles on SME financing is available at:

<http://www.oecd.org/finance/private-pensions/G20-OECD-High-level-Principles-on-SME-Financing-Progress-Report.pdf> and the report on corporate funding structures and incentives is available at:

<http://www.oecd.org/corporate/ca/Corporate-funding-structures-and-incentives-FSB-Report.pdf>.

UK Regulators Launch New Financial Services Register

On September 7, 2015, the FCA announced the launch of the new Financial Services Register, which aims to make it easier to locate a firm, individual or collective investment scheme or exchange that is regulated by the FCA or Prudential Regulation Authority. Firms that the regulators believe are providing regulated products or services without the necessary authorization are also included in the register for the first time, flagged in red. The Mutuals Public Register and Regulated Covered Bonds Register do not form part of the new register and can be searched separately.

The new Financial Services Register is available at: <https://register.fca.org.uk>.

Funds

UK Regulator Consults on Implementation of Recent Changes to UCITS V Directive

On September 3, 2015, the FCA issued a consultation paper on the implementation of the Undertaking for Collective Investment in Transferable Securities V Directive and other changes to the FCA Handbook that affect investment funds. The consultation deals with three sets of proposals for the regulation of authorized investment funds and seeks views on: (i) the rules and guidance that will give effect to the most recent changes made to the UCITS V Directive; (ii) changes that are to be made to the Handbook to ensure that these work well in conjunction with the European Long-Term Investment Funds Regulation, a new kind of fund vehicle which aims to contribute to financing the sustainable growth of the EU's economy through targeting long-term investment, which becomes applicable on December 9, 2015; and (iii) other changes to the Handbook relating to authorized investment funds, including clarification for some of the FCA's reporting requirements and ambiguities to certain rules, so that the Handbook is kept up to date generally. The FCA is required to transpose the most recent changes to the UCITS V Directive by March 18, 2016. Comments are due by November 9, 2015 for Part I of the consultation, October 5, 2015 for Part II and December 7, 2015 for Part III.

The consultation is available at: <http://www.fca.org.uk/static/documents/consultation-papers/cp1527-ucits-v.pdf>.

MiFID II

European Securities and Markets Authority Consults on Remaining Draft Implementing Technical Standards under MiFID II

On August 31, 2015, ESMA published a consultation paper on the three remaining draft Implementing Technical Standards under the Markets in Financial Instruments Directive and Markets in Financial Instruments Regulation (together known as MiFID II) that it has not yet consulted upon. These draft ITS concern: (i) the format and timing of communications and publications in case of removal and suspension of financial instruments from trading on a trading venue; (ii) the standard forms, templates and procedures for authorization of Data Reporting Services Providers, covering DRSP applications for authorization, as well as notifications to changes of membership; and (iii) the format and timing of position reports by investment firms and market operators of trading venues for commodity derivatives, emission allowances and derivatives thereof. Comments to the consultation paper are due by October 31, 2015.

The consultation paper is available at:

<https://www.esma.europa.eu/consultation/Consultation-Draft-implementing-technical-standards-under-MiFID-II>.

Securities

International Organization of Securities Commissions Review of Implementation of Incentive Alignment Recommendations for Securitization

On September 3, 2015, IOSCO published its final report on the peer review of implementation of incentive alignment recommendations for securitization. The report sets out the implementation progress of its recommendations, which were published in 2012, on incentive alignment in securitization. The recommendations relate to, amongst other things: (i) achieving global harmonization of incentives of investors and securitizers along the securitization value chain; (ii) jurisdictions evaluating and formulating approaches for such alignment; and (iii) minimizing any adverse effects of cross-border securitization transactions that may arise due to different approaches in incentive alignment and risk retention. The review states that only five jurisdictions of the 25 jurisdictions have reported to have completed implementation of all the recommended measures: China, India, Indonesia, Japan and Turkey. Eleven jurisdictions have taken steps to implement all measures but those steps were either not all complete or were not yet in force across the whole securitization market: Argentina, Brazil, France, Germany, Ireland, Italy, the Netherlands, Russia, Spain, the United Kingdom and the United States. The report also states that EU jurisdictions and the US were further progressed

in implementation than other jurisdictions with smaller securitization markets. IOSCO aims to conduct a further adoption monitoring and implementation review in 2016.

The report is available at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD504.pdf>.

Shadow Banking

International Organization of Securities Commissions Publishes Final Peer Review on the Regulation of Money Market Funds

On September 2, 2015, IOSCO published its final report on the peer review of the regulation of Money Market Funds. The report sets out the implementation progress of 31 jurisdictions in adopting legislation, regulation and policies relating to MMFs. The review covers eight areas of reform: (i) the scope of regulatory reform, including a definition of MMFs in regulation and other investment products that have similar features and investment objectives to MMFs; (ii) limitations to the types of risks and assets that are taken by MMFs; (iii) valuation practices of MMFs; (iv) liquidity management for MMFs; (v) possible risks that may arise that could affect the stability of MMFs offering a stable net asset value; (vi) use of credit ratings by the MMF industry; (vii) disclosure to investors; and (viii) practices related to repurchase agreement transactions. The review found that all participating jurisdictions had progressed in the implementation of measures across the areas of reform, that progress varied between different jurisdictions and that the global MMF market was dominated by five jurisdictions, being the US, France, Luxembourg, Ireland and China. The US, Brazil, India, Italy and Thailand are the only jurisdictions that have fully implemented measures across all eight reform areas.

The report is available at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD502.pdf>.

Upcoming Events

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 16, 2015: PRA Briefing on Senior Managers Regime for Professional Services Firms (registration deadline: September 18, 2015).

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

November 18 and 19, 2015: EBA 4th Annual Research Workshop - Financial regulation and the real economy: a micro-prudential perspective.

Upcoming Consultation Deadlines

- September 11, 2015: Basel Committee Consultation on Interest Rate Risk in the Banking Book
- September 11, 2015: UK Government Consultation on Reforms to UK Regulatory Architecture
- September 11, 2015: FDIC Revisions to Deposit Insurance Assessment System for Small Banks
- September 14, 2015: PRA Consultation on Corporate and Board Governance
- September 14, 2015: CFTC Proposed Rule on Cross-border Margin
- 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 31, 2015: ESMA Consultation ITS 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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