

Financial Regulatory Developments Focus



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In this newsletter, we provide a snapshot of the principal European, US and global financial regulatory developments of interest to banks, investment firms, broker-dealers, market infrastructures, asset managers and corporates.

Derivatives

ESMA Announces Authorization of Second CCP under EMIR

On 3 April 2014, the European Securities and Markets Authority (“ESMA”) announced that European Central Counterparty N.V. (EuroCCP - NL) had been authorized as a central counterparty (“CCP”) under the European Market Infrastructure Regulation (“EMIR”).

The press release is available at: <http://www.esma.europa.eu/news/ESMA-adds-EuroCCP-list-authorised-CCPs-under-EMIR?t=326&o=home>.

ESMA Publishes 2014 Work Plan for the Supervision of Trade Repositories

On 1 April 2014, ESMA published a summary of its 2014 supervisory work plan detailing the supervisory and monitoring tasks that it intends to undertake relating to trade repositories. The summary indicates that the European authority is adopting a risk-based approach to the supervision of trade repositories and is willing to use its investigatory powers to ensure that trade repositories comply with their obligations under EMIR to ensure that regulators have access to the relevant data.

ESMA’s announcement is available at: <http://www.esma.europa.eu/content/Trade-Repository-Supervision-Work-Plan-2014>.

UK Regulations Made to Delay Recovery Plan Obligation for Overseas Clearing Houses

On 4 April 2014, UK amending regulations were published which exempt recognized overseas clearing houses from the requirement to produce and maintain recovery plans while their application for recognition as a CCP under EMIR is being considered. The Regulations come into effect on 1 May 2014. UK-incorporated recognized clearing houses will be required to have and maintain recovery plans from 1 May 2014 regardless of their application for recognition under EMIR.

The Regulations are available at:

http://www.legislation.gov.uk/uksi/2014/905/pdfs/uksi_20140905_en.pdf.

Bank Structure

Federal Reserve Board Gives Further Extension for Compliance with the Volcker Rule

On 7 April 2014, the Board of Governors of the Federal Reserve System ("Federal Reserve Board") announced that it intends to exercise its authority to give banking entities two additional one-year extensions (which together would extend to 21 July 2017) to conform their ownership interests in and sponsorship of certain collateralized loan obligations ("CLOs") covered by section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly referred to as the Volcker Rule.

Section 619 generally prohibits insured depository institutions and any company affiliated with an insured depository institution from engaging in proprietary trading and from acquiring or retaining ownership interests in, sponsoring, or having certain relationships with a hedge fund or private equity fund, subject to a number of statutory exemptions, restrictions, and definitions.

Only CLOs in place as of 31 December 2013 that do not qualify for the exclusion in the Volcker Rule for loan securitizations would be eligible for the extension. The Federal Reserve Board intends to act on these extensions in August of this year and the next year. Furthermore, a banking entity would not have to include ownership interests in CLOs to determine its investment limits under the Volcker Rule, and a banking entity would not be required to deduct CLO investments from Tier 1 capital under the Volcker Rule until the end of the relevant conformance period.

The Federal Reserve Board consulted with staffs of the other agencies charged with enforcing the requirements of section 619, including the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation, the Securities and Exchange Commission ("SEC"), and the Commodity Futures Trading Commission, and the agencies plan to administer their oversight of banking entities under their respective jurisdictions in accordance with the Federal Reserve Board's conformance rule, including any extension of the conformance period applicable to CLOs.

The Federal Reserve Board press release is available at:

<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20140407a1.pdf>.

Regulatory Capital

EBA Published Final Draft RTS on Prudent Valuation

On 31 March 2014, the European Banking Authority (the "EBA") published its final draft Regulatory Technical Standards ("RTS") under the Capital Requirements Regulation ("CRR") which set out the requirements on prudent

valuation adjustments of fair valued positions. The final draft RTS put forward a methodology to calculate additional valuation adjustments, and present two approaches for the implementation of the prudent valuation requirements under the CRR: a Simplified Approach and a Core Approach.

The final draft RTS are available at:

<http://www.eba.europa.eu/documents/10180/642449/EBA-RTS-2014-06+RTS+on+Prudent+Valuation.pdf>.

RTS on Capital Adequacy for Financial Conglomerates Come into Force

On 3 April 2014, the delegated Regulation including RTS for the application of the calculation methods of capital adequacy requirements for financial conglomerates and the group solvency requirements under the Solvency II Directive was published in the Official Journal of the European Union. The Regulation came into force on 1 April 2014.

The Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_100_R_0001&from=EN.

UK Regulations on Capital Buffers and Macro-prudential Measures Published

On 3 April 2014, the statutory instrument implementing the provisions on capital buffers set out in the Capital Requirements Directive was published. The instrument designates the relevant authorities for setting each buffer rate and provides for transitional and final implementation dates. The Bank of England (“BoE”) is the designated authority for setting the countercyclical buffer which the Financial Policy Committee (“FPC”) will be able to use from 1 May 2014. The Prudential Regulation Authority (“PRA”) and the Financial Conduct Authority (“FCA”) will be responsible for setting the capital conservation buffer which will apply from 1 January 2016 subject to a transitional period and will apply fully from 1 January 2019. The PRA will also be responsible for setting the G-SII buffer, applicable from 1 January 2016 subject to a transitional period and will apply fully from 1 January 2019, and the O-SII buffer.

The instrument also designates, in accordance with the Capital Requirements Regulation, the BoE as the responsible authority for notifying EU authorities of any proposed macro-prudential measure that the FPC intends to take.

The legislation is available at:

http://www.legislation.gov.uk/ukxi/2014/894/pdfs/ukxi_20140894_en.pdf.

Financial Services

SEC Seeks Comment on Investor Advisory Committee Recommendation Regarding Target Date Funds

On 3 April 2014, the SEC announced that it is seeking comment on a recommendation by its Investor Advisory Committee regarding disclosure by target date mutual funds. In 2010, the SEC proposed a rule that would require

marketing materials for target date funds to include a graphical or tabular depiction of changes in the fund's asset allocation over time, known as a fund's "glide path." The SEC is reopening the comment period on its 2010 proposal to request comment on the committee's recommendation that the SEC develop a glide path illustration based on a standardized measure of fund risk, which would replace or supplement what it previously proposed. Comments on the SEC proposal are due by 2 June 2014.

The full text of the 2010 rule proposal is available at:

<http://www.sec.gov/rules/proposed/2010/33-9126.pdf>.

The full text of the release reopening the period for public comment on the 2010 proposal is available at: <http://www.sec.gov/rules/proposed/2014/33-9570.pdf>.

FSB Sets Out Next Steps for Financial Regulatory Reform

On 31 March 2014, the Financial Stability Board ("FSB") published a note of its meeting that day. The note sets out the following next steps for policy work relating to financial regulatory reform:

- **Ending too-big-to-fail:** the FSB intends, by the Brisbane Summit (15-16 November 2014), to develop (i) proposals on the adequacy, composition and location of gone-concern loss-absorbing capacity for global systemically important banks ("G-SIBs"); (ii) a framework for cross-border recognition of resolution actions including contractual and statutory elements (it was agreed that the industry should develop a proposal for a contractual approach before September 2014); (iii) a basic capital requirement for global systemically important insurers (work to be done by the International Association of Insurance Supervisors); and (iv) a report on the cross-border impacts of structural banking reforms being implemented and proposed in various jurisdictions. The note also states that FSB will publish, in April, finalized guidance on supervisory interaction with financial institutions on risk culture and a progress report on work needed to strengthen supervisory effectiveness. Both reports were published on 7 April 2014.
- **Shadow banking:** the FSB will start information sharing among authorities in May and launch a peer review in 2015 on national implementation of the FSB's framework. The implementation timetable for the recommendations to address financial stability risks linked to securities financing transactions will be published in April and the framework for haircuts on non-centrally cleared securities financing transactions will be finalized by September.
- **Data gaps:** the FSB intends to expand the data collection exercise for G-SIBs to include liabilities and funding. The exercise currently only includes concentration risk and connections between G-SIBs.
- **Reducing reliance on the ratings of credit rating agencies:** a peer review report will be published in April together with action plans from individual member jurisdictions.

The FSB also discussed recent developments on the implementation and harmonization of OTC derivatives reforms and on the analysis and work related to benchmarks.

The FSB note is available at:

http://www.financialstabilityboard.org/press/pr_140331.htm.

Financial Market Infrastructure

Payment Systems Regulator Established

On 1 April 2014, the new Payment Systems Regulator (“PSR”) was established, although it will only become operational in April 2015. On 4 April 2014, the FCA announced the members of the Board of the new Payment Systems Regulator. The Chairman is John Griffith-Jones, deputy chairman is Martin Wheatley, interim managing director is Mary Starks and there are three non-executive directors, Chris Woolard, Brian Pomeroy, and Amelia Fletcher. The FCA is currently seeking stakeholder input on the PSR and will consult formally later this year on the regulatory approach, fees and the rulebook. HM Treasury has until April 2015 to announce which payment systems are to be regulated by the PSR.

Further information is available at: <http://www.fca.org.uk/firms/firm-types/payment-systems>.

Funds

FCA Warns Firms to Apply for AIFMD Authorization by 22 April 2014

On 1 April 2014, the FCA warned investment managers managing alternative investment funds (“AIFs”) of the potential consequences of not being fully authorized by the FCA under the alternative investment fund managers directive (“AIFMD”) by 22 July 2014. Under the transitional measures granted by HM Treasury, alternative investment fund managers (“AIFMs”) will be able to continue to manage AIFs until the FCA has determined their application for authorization provided they submit their applications by 22 July 2014. The FCA noted that firms not fully authorized would still need to be fully compliant with all relevant AIFMD requirements from 22 July 2014, including, where necessary, engaging the services of a depositary, would not be entitled to passport their activities into other EEA member states until authorization and the relevant notification is processed and may also risk business interruption if their application is materially incomplete or deficient and, as a result, authorization refused. The FCA is encouraging firms to apply for authorization under the AIFMD by 22 April 2014 at the latest.

Further information is available at:

<http://www.fca.org.uk/firms/markets/international-markets/aifmd/latest-news>.

Financial Crime

Directive on Freezing and Confiscation of Proceeds of Crime in the EU Published

On 3 April 2014, the new EU Directive on the freezing and confiscation of proceeds of crime was signed. The Directive was agreed between the European Parliament and the Council of the European Union earlier this year. The Council announced its formal adoption on 14 March 2014. The UK has not opted into the Directive. The Directive will take effect once published in the Official Journal of the European Union but will only come into force once transposed into relevant national law.

The Directive is available at:

<http://register.consilium.europa.eu/doc/srv?l=EN&f=PE%20121%202013%20REV%202>.

People

Rebecca Olsen Named Chief Counsel in the SEC's Office of Municipal Securities

On 2 April, 2014, the SEC announced Rebecca J. Olsen as chief counsel in its Office of Municipal Securities.

Jessica Kane Named Deputy Director in the SEC's Office of Municipal Securities

On 2 April 2014, the SEC announced Jessica S. Kane as deputy director in its Office of Municipal Securities.

Darrin Benhart Named Co-Chair of International Task Force on Prudential Treatment of Assets

On 2 April 2014, the OCC announced that Deputy Comptroller for Credit and Market Risk Darrin Benhart will co-chair the Task Force on Prudential Treatment of Assets of the Basel Committee on Bank Supervision.

Gary Whalen Named Deputy Comptroller for Economic and Policy Analysis

On 3 April 2014, the OCC announced that Dr. Gary Whalen has been appointed Deputy Comptroller for Economic and Policy Analysis effective 6 April 2014.

Events

10 April 2014: UK Payment Systems Regulator Stakeholder Event.

EUROPE

BARNEY REYNOLDS

T: +44 20 7655 5528

barney.reynolds@shearman.com

London

AZAD ALI

T: +44 20 7655 5659

azad.ali@shearman.com

London

ANNA DOYLE

T: +44 20 7655 5978

anna.doyle@shearman.com

London

ELLERINA TEO

T: +44 20 7655 5070

ellerina.teo@shearman.com

London

JAMES CAMPBELL

T: +44 20 7655 5570

james.campbell@shearman.com

London

THOMAS DONEGAN

T: +44 20 7655 5566

thomas.donegan@shearman.com

London

JOHN ADAMS

T: +44 20 7655 5740

john.adams@shearman.com

London

MARIA CHAN

T: +44 20 7655 5835

maria.chan@shearman.com

London

NATALIE CALDWELL

T: +44 20 7655 5722

natalie.caldwell@shearman.com

London

BILL MURDIE

T: +44 20 7655 5149

bill.murdie@shearman.com

London

KOLJA STEHL

T: +49 69 9711 1623

kolja.stehl@shearman.com

Frankfurt

MAK JUDGE

T: +44 20 7655 5182

mak.judge@shearman.com

London

OLIVER LINCH

T: +44 20 7655 5715

oliver.linch@shearman.com

London

AMERICAS

DONALD N. LAMSON

T: +1 202 508 8130

donald.lamson@shearman.com

Washington, DC

JENNIFER D. MORTON

T: +1 212 848 5187

jennifer.morton@shearman.com

New York

JARED R. GIANATASIO

T: +1 212 848 4384

jared.gianatasio@shearman.com

New York

RUSSELL D. SACKS

T: +1 212 848 7585

rsacks@shearman.com

New York

SYLVIA FAVRETTO

T: +1 202 508 8176

sylvia.favretto@shearman.com

Washington, DC

BRADLEY K. SABEL

T: +1 212 848 8410

bsabel@shearman.com

New York

CHRISTINA BROCH

T: +1 202 508 8028

christina.broch@shearman.com

Washington, DC

ABU DHABI | BEIJING | BRUSSELS | FRANKFURT | HONG KONG | LONDON | MILAN | NEW YORK | PALO ALTO
PARIS | ROME | SAN FRANCISCO | SÃO PAULO | SHANGHAI | SINGAPORE | TOKYO | TORONTO | WASHINGTON, DC

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This memorandum 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.

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