

## 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.**

Our latest quarterly Governance & Securities Law Focus newsletter is available at [http://www.shearman.com/~media/Files/NewsInsights/Publications/2014/01/Governance and Securities\\_Q4\\_BulletinCMCGFIAECEBLT012414.pdf](http://www.shearman.com/~media/Files/NewsInsights/Publications/2014/01/Governance_and_Securities_Q4_BulletinCMCGFIAECEBLT012414.pdf).

### Derivatives

#### ESMA Publishes Final Advice on Procedural Rules to Impose Fines on Trade Repositories

On 24 January 2014, the European Securities and Markets Authority (“ESMA”) published its final report and technical advice (dated 20 December 2013) to the European Commission on the procedural rules to impose fines and periodic penalty payments on trade repositories under the European Market Infrastructure Regulation (“EMIR”). Under EMIR, ESMA is responsible for authorizing and supervising trade repositories, including imposing fines where a trade repository has intentionally or negligently committed an infringement listed in Annex 1 of EMIR and imposing periodic penalty payments to compel a trade repository to end an infringement or comply with EMIR. The European Commission is responsible for adopting rules of procedure for the exercise of the powers by ESMA. The final report and technical advice will now be considered by the European Commission.

The final report and technical advice are available at:

<http://www.esma.europa.eu/content/Technical-Advice-Commission-procedural-rules-impose-fines-and-periodic-penalty-payments-Trad>.

#### CFTC to Form an Interdivisional Working Group to Review Regulatory Reporting

On 21 January 2014, the Commodity Futures Trading Commission (“CFTC”) announced the formation of an interdivisional staff working group to review certain swaps transaction data recordkeeping and reporting provisions. The working group, led by the director of the CFTC’s Division of Market Oversight, will formulate and recommend questions for public comment regarding, among

other things, compliance with part 45 reporting rules, and related provisions, and consistency in regulatory reporting among market participants.

## Regulatory Capital

### Delegated Regulation on Capital Adequacy Requirements for Financial Conglomerates

On 21 January 2014, the European Commission published its final delegated regulation incorporating regulatory technical standards for the application of the calculation methods of capital adequacy requirements for financial conglomerates (the “Delegated Regulation on Capital Adequacy for Financial Conglomerates”). The Delegated Regulation on Capital Adequacy for Financial Conglomerates applies to institutions that are part of a financial conglomerate. A financial conglomerate is an institution which has significant activities in both the insurance and the banking and investment services sectors. Once published in the Official Journal of the European Union, the Regulation will be binding in all Member States.

The Delegated Regulation on Capital Adequacy for Financial Conglomerates is available at:

<http://ec.europa.eu/transparency/regdoc/rep/3/2014/EN/3-2014-139-EN-F1-1.Pdf>.

### PRA Proposals on Redrafting Certain Modules of its Handbook

The Prudential Regulation Authority (“PRA”) issued, on 21 January 2014, proposals to redraft certain modules of its Handbook. The proposals are part of a project to reform the Handbook material inherited from the Financial Services Authority with a view to the new PRA Handbook being available on a new online website in 2015. The new PRA Handbook will only contain PRA rules which will be supplemented by separate supervisory statements setting out guidance on the PRA’s expectations of firms in light of the rules. The consultation paper includes proposals on (i) replacing the Principles for Business with Fundamental Rules which will include some of the current rules (in amended form) and new rules on preparing for resolution and prohibiting the provision of false or misleading information to the PRA; (ii) replacing the rules and guidance on “Information gathering by the FSA of its own initiative” with a part called “Information Gathering”; (iii) auditors; (iv) use of skilled persons; (v) permissions and waivers; (vi) notifications; and (vii) a draft statement of policy on the exercise of the PRA’s financial stability information power. The proposals are relevant to all firms regulated by the PRA. Responses are due by 14 March 2014.

The PRA’s consultation paper is available at:

<http://www.bankofengland.co.uk/pr/Documents/publications/policy/2014/rulebookcon214.pdf>.

### Federal Reserve Board Provides Additional Information on Expectations for Recovery and Resolution Preparedness of Certain Large Domestic Bank Holding Companies

On 24 January 2014, the Board of Governors of the Federal Reserve System (Federal Reserve Board) issued supervisory guidance on its expectations for the recovery and resolution preparedness of certain large domestic bank holding companies. The supervisory guidance discusses the importance of having robust systems to manage collateral, information, and payments, clearing, and settlement activities. The expectations will be incorporated into the Federal Reserve Board's ongoing supervisory assessments of recovery and resolution preparedness at large bank holding companies subject to the guidance. The supervisory guidance is applicable to eight domestic bank holding companies: Bank of America Corporation; Bank of New York Mellon Corporation, PLC; Citigroup Inc.; Goldman Sachs Group, Inc.; JPMorgan Chase & Co.; Morgan Stanley; State Street Corporation; and Wells Fargo & Company.

The supervisory guidance is available at:

<http://www.federalreserve.gov/bankinfo/srletters/sr1401.pdf>

### Basel Committee Consults on Revised Good Practice Principles for Supervisory Colleges

On 23 January 2014, the Basel Committee for Banking Standards (the "Basel Committee") published proposed revisions to the "Good practice principles on supervisory colleges". The proposed revisions, which follow a review of practical challenges in implementing the original principles, update the original principles and add further best practices. Supervisory colleges were set up to enhance the supervision of global systemically important banks in response to the recent financial crisis. Comments on the proposals are requested by 18 April 2014.

The consultation paper is available at: <http://www.bis.org/publ/bcbs276.pdf>.

### Basel Committee Issues Sound Practices for Capital Planning Processes

On 23 January 2014, the Basel Committee issued "A Sound Capital Planning Process: Fundamental Elements - Sound practices" for banks to consider when undertaking capital planning exercises. The document presents sound practices for the overall improvement in the capital planning processes of banks required to implement the Basel III framework.

The document is available at: <http://www.bis.org/publ/bcbs277.pdf>.

## Financial Services

### ECJ Upholds ESMA's Emergency Powers under the Short Selling Regulation

On 22 January 2014, the European Court of Justice (the "ECJ") issued its judgment on the UK's challenge of ESMA's powers under the Short Selling Regulation. The UK government sought the annulment of Article 28 of the Short Selling Regulation which allows ESMA to intervene, in the absence of action or

adequate action by the national regulator, in a Member State's financial markets in the event of a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the European Union. ESMA is able to impose disclosure obligations as well as ban short selling. There is no appeal against the ECJ decision.

A copy of the judgment is available at:

<http://www.bailii.org/eu/cases/EUECJ/2014/C27012.html>.

## Consumer Protection

### CFPB Proposes Rule to Oversee Larger Nonbank International Money Transfer Providers

On 23 January 2014, the Consumer Financial Protection Bureau (CFPB) proposed a rule that would allow it to supervise certain non-bank international money transfer providers for the first time. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) expanded the scope of the Electronic Fund Transfer Act to provide protections for consumers who send remittance transfers. These expanded protections are embodied in the CFPB's Remittance Rule, which went into effect October 2013. Under the proposed rule, CFPB examiners would be able to examine larger non-bank international money transfer providers for compliance with the Remittances Rule. Examiners would be looking to ensure that these non-banks are offering protections such as giving consumers better disclosures, giving consumers an option to cancel and correcting errors made by their agents.

The proposed rule is available at:

<http://www.consumerfinance.gov/newsroom/cfpb-proposes-rule-to-oversee-larger-nonbank-international-money-transfer-providers/>.

## Enforcement

### FCA Fines Standard Bank for AML Failures

The Financial Conduct Authority (the "FCA") has fined Standard Bank Plc £7,640,400 for failing to comply with the UK's money laundering regulations and, in particular, for failing to ensure that its anti-money laundering policies and procedures were applied properly in relation to corporate customers connected to politically exposed persons during the period December 2007 to July 2011. The regulator found that Standard Bank had not consistently carried out adequate enhanced due diligence when business relationships were established and had failed to conduct an appropriate level of ongoing monitoring of existing relationships.

The FCA's final notice issued to Standard Bank is available at:

<http://www.fca.org.uk/static/documents/decision-notices/standard-bank-plc.pdf>.

## People

### Kevin P. Walsh Named OCC Deputy Comptroller for Market Risk

On 24 January 2014, the Office of the Comptroller of the Currency (OCC) named Kevin P. Walsh as the OCC Deputy Comptroller for Market Risk.

## Hearings

3 February 2014: Safeguarding Consumers' Financial Data (Senate Committee on Banking, Housing and Urban Affairs)

29 January 2014: The Annual Report and Oversight of the Office of Financial Research (Senate Committee on Banking, Housing and Urban Affairs)

28 January 2014: Oversight and Reauthorization of the Export-Import Bank of the United States (Senate Committee on Banking, Housing and Urban Affairs)

28 January 2014: The Semi-Annual Report of the CFPB (House Committee on Financial Services)

## EUROPE

**BARNEY REYNOLDS**

T: +44 20 7655 5528

[barney.reynolds@shearman.com](mailto:barney.reynolds@shearman.com)

London

**AZAD ALI**

T: +44 20 7655 5659

[azad.ali@shearman.com](mailto:azad.ali@shearman.com)

London

**ANNA DOYLE**

T: +44 20 7655 5978

[anna.doyle@shearman.com](mailto:anna.doyle@shearman.com)

London

**JAMES CAMPBELL**

T: +44 20 7655 5570

[james.campbell@shearman.com](mailto:james.campbell@shearman.com)

London

**THOMAS DONEGAN**

T: +44 20 7655 5566

[thomas.donegan@shearman.com](mailto:thomas.donegan@shearman.com)

London

**JOHN ADAMS**

T: +44 20 7655 5740

[john.adams@shearman.com](mailto:john.adams@shearman.com)

London

**MAK JUDGE**

T: +44 20 7655 5182

[mak.judge@shearman.com](mailto:mak.judge@shearman.com)

London

**NATALIE CALDWELL**

T: +44 20 7655 5722

[natalie.caldwell@shearman.com](mailto:natalie.caldwell@shearman.com)

London

**BILL MURDIE**

T: +44 20 7655 5149

[bill.murdie@shearman.com](mailto:bill.murdie@shearman.com)

London

**KOLJA STEHL**

T: +49 69 9711 1623

[kolja.stehl@shearman.com](mailto:kolja.stehl@shearman.com)

Frankfurt

**ELLERINA TEO**

T: +44 20 7655 5070

[ellerina.teo@shearman.com](mailto:ellerina.teo@shearman.com)

London

**OLIVER LINCH**

T: +44 20 7655 5715

[oliver.linch@shearman.com](mailto:oliver.linch@shearman.com)

London

## AMERICAS

**DONALD N. LAMSON**

T: +1 202 508 8130

[donald.lamson@shearman.com](mailto:donald.lamson@shearman.com)

Washington, DC

**JENNIFER D. MORTON**

T: +1 212 848 5187

[jennifer.morton@shearman.com](mailto:jennifer.morton@shearman.com)

New York

**RUSSELL D. SACKS**

T: +1 212 848 7585

[rsacks@shearman.com](mailto:rsacks@shearman.com)

New York

**SYLVIA FAVRETTO**

T: +1 202 508 8176

[sylvia.favretto@shearman.com](mailto:sylvia.favretto@shearman.com)

Washington, DC

**BRADLEY K. SABEL**

T: +1 212 848 8410

[bsabel@shearman.com](mailto:bsabel@shearman.com)

New York

**CHRISTINA BROCH**

T: +1 202 508 8028

[christina.broch@shearman.com](mailto:christina.broch@shearman.com)

New York

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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.

BROADGATE WEST | 9 APPOLD STREET | LONDON | EC2A 2AP

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