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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**

**Updated ESMA Q&As on EMIR**

On 21 May 2014, the European Securities and Markets Authority (“ESMA”) published an updated version of its Q&As on the application of the European Market Infrastructure Regulation. The purpose of the Q&As is to help harmonization across the EU and to provide guidance to market participants. The latest updated Q&As include information on the applicability of the provisions of EMIR to alternative investment funds (“AIFs”) and non-EU central banks as well as risk committee and prudential requirements for CCPs.

The Q&As are available at: <http://www.esma.europa.eu/news/ESMA-publishes-8th-updated-QA-EMIR-implementation?t=326&o=home>.

**CFTC Proposal to Amend Regulations for Entities Entering into Swaps with Utility Special Entities**

On 22 May 2014, the Commodity Futures Trading Commission (“CFTC”) issued a proposed rule amendment to adjust the de minimis threshold for determining if an entity that enters into swaps with utility special entities must register as a swap dealer. The proposal would amend the CFTC’s swap dealer definition to permit a person dealing in “utility operations-related swaps” with “utility special entities” to exclude those swaps in determining whether that person has exceeded the de minimis threshold specific to dealing with special entities. Under the proposal, however, such swaps would be counted for determining whether the general dealing de minimis threshold applies.

The full text of the proposed rule is available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister052214-a1.pdf>.

### **CFTC Opens Comment Period for Further Consideration of Hedging of Physical Commodities Issues**

On 22 May 2014, the CFTC announced that it is reopening comment periods for two previous proposals, the Position Limits Proposal and the Aggregation Proposal, for a three-week period starting 12 June 2014 and ending 3 July 2014. The CFTC specifically asked market participants to comment on the following issues: hedges of a physical commodity by a commercial enterprise, including gross hedging, cross-commodity hedging, anticipatory hedging, and the process for obtaining a non-enumerated exemption; the setting of spot month limits in physical-delivery and cash-settled contracts and a conditional spot-month limit exemption; the setting of non-spot limits for wheat contracts; the aggregation exemption for certain ownership interests of greater than 50 percent in an owned entity; and aggregation based on substantially identical trading strategies.

The full text of the proposed rule is available at:

<http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister052214-a.pdf>.

### **CFTC Staff Issues No-Action Relief from Compliance with Certain Recordkeeping Requirements**

On 22 May 2014, the CFTC's Division of Swap Dealer and Intermediary Oversight and Division of Market Oversight issued a no-action letter that provides relief from compliance with certain recordkeeping provisions of Regulation 1.35(a) to members of Designated Contract Markets or Swap Execution Facilities that are not registered or required to be registered with the CFTC ("Covered Members"). The CFTC press release explains that the CFTC hopes to incentivize trading on Swap Execution Facilities and Designated Contract Markets with the issuance of the no-action letter. The letter provides relief, pending further CFTC action, to Covered Members from complying with the requirements to keep electronic text messages and to keep records in a form and manner identifiable and searchable by transaction.

The full text of the no-action letter is available at:

<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-72.pdf>.

## **Regulatory Capital**

### **Secondary Legislation Under CRD IV Published in Official Journal of the European Union**

On 20 May 2014, several European Commission Delegated Regulations setting out regulatory technical standards ("RTS") under CRD IV were published in the Official Journal of the European Union. The RTS relate to: (i) the determination of what constitutes close correspondence between the value of an institution's covered bonds and the value of the institution's assets; (ii) the information to be exchanged between national regulators; (iii) the definition of market; (iv) the determination of the proxy spread and limited smaller portfolios for credit valuation adjustment risk; (v) the classes of instruments that reflect the credit

quality of a firm as a going concern and are appropriate to be used for variable remuneration; (vi) the non-delta risk of options in the standardized market risk approach; (vii) the assessment of the materiality of extensions and changes of the Internal Ratings Based Approach and the Advanced Measurement Approach; and (viii) the definitions for material exposures and thresholds for internal approaches to specific risk in the trading book.

The legislation is available at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2014:148:FULL&from=EN>.

### **Federal Reserve Board Final Rules to Repeal its Regulations DD and P and Amend Regulation V**

On 22 May 2014, the Board of Governors of the Federal Reserve System (“Federal Reserve Board”) repealed its Regulation DD (Truth in Savings) and Regulation P (Privacy of Consumer Financial Information) and issued final amendments to the Identity Theft Red Flags rule in Regulation V (Fair Credit Reporting). The Federal Reserve Board is repealing Regulation DD and Regulation P in response to the issuance of interim final rules by the Bureau of Consumer Financial Protection (“CFPB”) which are substantially identical to Regulation DD and Regulation P. The Federal Reserve Board is also making amendments to provisions of the Board’s Regulation V that require financial institutions and creditors to implement identity theft prevention programs. The final rule reflects legislation that amended the Fair Credit Reporting Act (“FCRA”) to clarify that these provisions apply only to creditors that regularly extend credit or obtain consumer reports in the ordinary course of their business. The amendments to the FCRA were intended to narrow the scope of the law so that it would not be applied to professionals, such as doctors or lawyers, who sometimes allow consumers to delay payment.

The full text of the Federal Register notice repealing Regulation DD is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20140522a1.pdf>.

The full text of the Federal Register notice repealing Regulation P is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20140522a2.pdf>.

The full text of the amendments to Regulation V is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20140522a3.pdf>.

## **Recovery & Resolution**

### **EU Bank Resolution Agreement Signed by 26 Member States**

On 21 May 2014, the Council of the European Union announced that representatives of 26 EU member states had signed an intergovernmental agreement on the transfer of contributions to a single EU resolution fund to be established under the EU banking union. The United Kingdom and Sweden did not sign the agreement. The agreement relates to the recently agreed Single Resolution Mechanism (“SRM”) Regulation which will establish the fund and a

central decision-making board. The fund, which will be financed by bank contributions, will be developed over eight years to reach a target level of at least 1 percent of all covered deposits of all authorized banks in participating member states. The agreement will enter into force following a period of ratification. The intention is for the ratification process to be completed in time for the SRM to become fully operational by 1 January 2016.

The Council's announcement is available at:

[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ecofin/142710.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/142710.pdf).

## Funds

### Amendments to UK Implementation of AIFMD

On 23 May 2014, secondary legislation amending UK legislation implementing the Alternative Investment Fund Managers Directive ("AIFMD") was published. The secondary legislation includes provisions: (i) requiring the management of an AIF from outside of the EEA that is registered or marketed in an EEA member state (including the UK) to be regulated as if the management was taking place in the UK; (ii) to allow Gibraltar-based entities to exercise the same EU passporting rights under the AIFMD as their UK counterparts; (iii) amending transitional provisions for UK firms being brought within the scope of AIFMD so that if transitional firms have not had their FCA application determined by the end of the transitional period, they may continue to manage and market funds within the UK (but not other Member States) as if they had been granted the authorization or registration for which they had applied until their application is so determined; and (iv) amending the date by which a firm must notify the FCA of its intention to carry out the activity of insurance mediation. The secondary legislation will come into force 16 June 2014, with the exception of Article 6 which will enter into force on 22 July 2014.

The legislation is available at:

[http://www.legislation.gov.uk/uksi/2014/1292/pdfs/uksi\\_20141292\\_en.pdf](http://www.legislation.gov.uk/uksi/2014/1292/pdfs/uksi_20141292_en.pdf) and [http://www.legislation.gov.uk/uksi/2014/1313/pdfs/uksi\\_20141313\\_en.pdf](http://www.legislation.gov.uk/uksi/2014/1313/pdfs/uksi_20141313_en.pdf).

## Financial Services

### ESMA Consults on Level 2 Legislation and Technical Advice under MiFID II

On 22 May 2014, ESMA published two consultation papers relating to the recently agreed revised Markets in Financial Instruments Directive and the new Markets in Financial Instruments Regulation (together, known as "MiFID II"). The first is a consultation paper that relates to the technical advice requested from ESMA by the European Commission on 24 April 2014 and covers investor protection, transparency, data publication, trading venue requirements, commodity derivatives and portfolio compression. ESMA has stated that it will publish its technical advice as provided to the European Commission by the due date

(expected to be in December 2014, depending on the timing of publication of MiFID II in the Official Journal of the European Union). The second paper is a discussion paper covering investor protection, transparency, data publication, trading venue requirements, commodity derivatives, organisational requirements for investment firms and trading venues, market data reporting and post-trading requirements (clearing). ESMA will use the responses to the discussion paper to develop a consultation paper on draft implementing technical standards and RTS, which consultation is expected to be published in late 2014/early 2015. Responses to both papers are due by 1 August 2014.

Both papers are available at:

<http://www.esma.europa.eu/news/ESMA-consults-MiFID-reforms?t=326&o=home>.

## Enforcement

### Barclays Fined for Failings Relating to London Gold Fixing

On 23 May 2014, the FCA announced that it had fined Barclays Bank Plc £26 million for systems and controls failings and failing to manage conflicts of interest between itself and its customers in relation to the London Gold Fixing. The London Gold Fix sets the price for gold on a daily basis and is a published benchmark. The current members of the London Gold Fix are Barclays, Bank of Nova Scotia, HSBC and Société Générale (Deutsche Bank resigned earlier in May 2014). In addition, the FCA banned Daniel Plunkett, a former Barclays trader, from performing any function relating to a regulated activity and fined him £95,000.

The FCA announcement is available at:

<http://www.fca.org.uk/news/barclays-fined-26m-for-failings-surrounding-the-london-gold-fixing>.

### Federal Reserve Board Action Against Credit Suisse

On 19 May 2014, the Federal Reserve Board announced that Credit Suisse will pay a \$100 million penalty for unsafe and unsound practices and failure to comply with the federal banking laws governing its activities in the United States. The Federal Reserve Board also issued a cease and desist order requiring Credit Suisse promptly to address deficiencies in its oversight, management and controls governing compliance with US laws. This action is taken in conjunction with actions by the Department of Justice and the New York State Department of Financial Services for violations of the federal income tax laws and various New York State laws. The penalties issued by the agencies total \$2.6 billion.

The full text of the Cease and Desist Order issued by the Federal Reserve Board is available at:

<http://www.federalreserve.gov/newsevents/press/enforcement/enf20140519a1.pdf>.

The full text of the Federal Reserve Board press release announcing the penalty against Credit Suisse is available at:

<http://www.federalreserve.gov/newsevents/press/enforcement/20140519a.htm>.

## Events

7 and 8 July 2014: ESMA public hearing relating to consultation papers under MiFID II (see above under Financial Services).

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.

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