



## 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.

Our European Governance & Securities Law Focus Newsletter is available [here](#).

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## Bank Prudential Regulation & Regulatory Capital

### US Federal Reserve Board and the Office of the Comptroller of the Currency approve CIT Group's Acquisition of OneWest Bank

In decisions issued on July 19 and July 21, 2015, respectively, the Federal Reserve and the OCC approved applications by CIT to acquire OneWest Bank and to merge CIT Bank into OneWest Bank, which will operate under the name CIT Bank, National Association following the merger. OneWest Bank was established upon its acquisition of certain assets and liabilities of the failed IndyMac Bank in 2009. Each of the merging banks has approximately \$15 billion in deposits, and the merged bank will have approximately \$44 billion in total assets, making this one of the larger recent bank merger approvals. The applications were the subject of thousands of public comments, many of them in favor of the application. The regulators also held a public meeting on the application, which is relatively uncommon. In approving the applications, the regulators considered numerous facts, including compensation practices, AML systems, and risks to US financial stability (including factors that might complicate resolution of the firm). The regulators also undertook an extensive review of factors under the Community Reinvestment Act and other considerations regarding the convenience and needs of the communities served by the banks. In connection with its approval, the OCC is subjecting OneWest Bank to its "Heightened Standards" for risk management, even though those standards typically apply only to banks with \$50 billion or more in consolidated assets. The OCC is also requiring OneWest Bank to develop a comprehensive business plan and prepare quarterly reports on compliance with that plan.

FRB Order No. 2015-20 is available at: <http://www.federalreserve.gov/newsevents/press/orders/orders20150721a1.pdf>

The OCC letter of approval is available at: <http://www.occ.gov/news-issuances/news-releases/2015/nr-occ-2015-105a.pdf>

### US Federal Reserve Board and Federal Deposit Insurance Corporation Provide Additional Guidance for Certain Resolution Plans

On July 28, 2015, the Federal Reserve Board and the FDIC provided guidance to 119 firms that will be filing updated resolution plans in December 2015. These firms include three nonbank financial companies: American International Group, Inc., Prudential Financial, Inc., and General Electric Capital Corporation. Based on a review of the plans submitted in 2014, the agencies have provided direction to each firm with respect to their upcoming resolution plans. The Dodd-Frank Wall Street Reform and Consumer Protection Act requires that bank holding companies with total consolidated assets of \$50 billion or more and nonbank financial companies designated by the Financial Stability Oversight Council as systemically important periodically submit resolution plans to the FDIC and the Federal Reserve. Each plan must describe the company's strategy for rapid and orderly resolution under the US Bankruptcy Code or other applicable insolvency regime in the event of material financial distress or failure of the company.

The updated plans must be submitted on or before December 31, 2015. Additionally, the agencies released an updated tailored resolution plan template. A tailored resolution plan describes resolution strategies in respect of nonbanking operations of a firm and on the relationship between the nonbanking and banking operations.

The joint press release is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/20150728b.htm>.

The template for tailored resolution plans is available at: <http://www.federalreserve.gov/bankinforeg/resolution-plans/tailored-resolution-model-template.pdf>.

### European Banking Authority to Propose Legislative Initiative to Improve Consistency of Assessment of Bank Management

On July 22, 2015, the European Banking Authority published a report, dated June 16, 2015, following a peer review of the EBA Guidelines on the assessment of the suitability of members of the management body and key function holders in banks. The EU Capital Requirements Directive provides that a bank must have at least two suitable persons who effectively direct the business. The EBA Guidelines set out the criteria and processes for banks and their supervisors to follow when assessing the suitability of proposed and appointed members of the management body and provisions for the assessment of key function holders. The peer review results show that national regulators mostly apply the EBA Guidelines, that best practices have been identified but that there is no harmonized practice amongst EU Member States in many areas of the Guidelines. The EBA intends to set out best practices in a revised version of the EBA Guidelines and to recommend a legislative initiative on certain points to ensure further alignment of practices among Member States.

The report is available at: <http://www.eba.europa.eu/documents/10180/950548/EBA+Peer+Review+Report+on+suitability.pdf> and the EBA Guidelines are available at: <https://www.eba.europa.eu/documents/10180/106695/EBA-GL-2012-06--Guidelines-on-the-assessment-of-the-suitability-of-persons-.pdf>.

### **European Banking Authority Publishes Reports on Consistency of Risk-Weighted Approaches and Calculation of Counterparty Credit Risk Exposures and Credit Valuation Adjustment Risk**

On July 22, 2015, the EBA published two reports on the findings of two benchmarking exercises conducted under CRD. The aim of the exercises is to assess and improve the consistency and comparability of risk weighted assets across large EU banks. The first report deals with findings on internal approaches applied for the calculation of RWAs for Low Default Portfolios across large EU firms. The study found that 75 percent of the observed differences in Global Charge levels across institutions can be explained by the proportion of defaulted exposures in a portfolio and portfolio mix. When each portfolio is looked at separately, the impact of defaulted exposures explains around 50 percent of GC differences for both large corporate and institutions portfolios. The remaining 50 percent could be attributed to bank-specific issues such as IRB parameters or risk management practices. Data was collected from 41 institutions for this study. The study was based only on draft technical standards, which will in the future be required to be used in benchmarking exercises. The report states that more in-depth analysis is required on the impact of collateral on internal loss-given-default estimates as well as comparisons between the internal ratings-based and standardized approaches. The second report deals with the internal approaches applied for Counterparty Credit Risk exposures under the Internal Model Method and Credit Valuation Adjustment Risk according to the Advanced Approach. This study was carried out using data collected by the Basel Committee for Banking Supervision and shows significant variability in the calculation of CCR and Credit Valuation Adjustment Risk when using the IMM across banks, especially where equity and foreign exchange OTC derivatives are concerned.

The press release and both reports are available at: <http://www.eba.europa.eu/-/eba-publishes-rwa-assessment-as-the-next-step-in-improving-consistency-of-internal-model-outcom-1>.

## **Consumer Protection**

### **US Consumer Financial Protection Bureau Finalizes Two-Month Extension of Know Before You Owe Mortgage Disclosure Rule Effective Date**

On July 21, 2015, the Consumer Financial Protection Bureau issued a final rule delaying the effective date of the Know Before You Owe mortgage disclosure rule, also known as the TILA-RESPA Integrated Disclosures rule, to Saturday October 3, 2015. The rule requires simpler mortgage disclosure forms that clearly illustrate the terms of a mortgage for a homebuyer. The CFPB made the change to fix an administrative error that would have delayed the August 1, 2015 effective date of the rule until at least August 15, 2015. The final rule also includes technical corrections to two provisions of the Know Before You Owe mortgage disclosure rule.

The final rule is available at: [http://files.consumerfinance.gov/f/201507\\_cfpb\\_2013-integrated-mortgage-disclosures-rule-under-the-real-estate-settlement-procedures-act-regulation-x-and-the-truth-in-lending-act-regulation-z-and-amendments-delay-of-effective-date.pdf](http://files.consumerfinance.gov/f/201507_cfpb_2013-integrated-mortgage-disclosures-rule-under-the-real-estate-settlement-procedures-act-regulation-x-and-the-truth-in-lending-act-regulation-z-and-amendments-delay-of-effective-date.pdf).

### **UK Financial Conduct Authority Issues Guidance on Managing Risks from Performance Management**

On July 27, 2015, the Financial Conduct Authority published final guidance for firms on risks to customers from performance management. The guidance applies to all firms with staff that deal directly with retail customers. The guidance is intended to assist firms in ensuring that the risk of misselling from performance management is managed and to monitor performance management, looking for indicators of undue pressure to identify poor practices. The FCA will reconsider the guidance once the Markets in Financial Instruments Regulation and Directive, known as MiFID II, come into effect on January 3, 2017.

The guidance is available at: <http://www.fca.org.uk/static/documents/finalised-guidance/fg15-10.pdf>.

## Derivatives

### US Commodity Futures Trading Commission Division of Swap Dealer and Intermediary Oversight Issues a Letter to Certain Registered Commodity Trading Advisors Exempting them from Filing Form CTA-PR

On July 23, 2015, the CFTC's Division of Swap Dealer and Intermediary Oversight issued a letter (dated July 21, 2015) that exempts commodity trading advisors that are registered but do not direct any trading of client commodity interest accounts from filing Form CTA-PR. The letter describes the DSIO's reasoning that requiring a CTA does not direct any client commodity interest accounts to file a Form CTA-PR would provide little additional information regarding that CTA beyond that already available to the CFTC as part of the registration process and the CTA's ongoing obligations as a registrant. Accordingly, the letter provides an exemption for these registrants from the reporting provisions of CFTC Regulation 4.27(c).

CFTC Staff Letter 15-47 is available at: <http://www.cftc.gov/ucm/groups/public/@llettergeneral/documents/letter/15-47.pdf>.

### Agency for the Cooperation of Energy Regulators Approves Third Party Registered Reporting Mechanisms

On July 24, 2015, the EU Agency for the Cooperation of Energy Regulators announced that it had approved the first five third-party Registered Reporting Mechanisms under the Regulation on wholesale energy market integrity and transparency, known as REMIT. From October 7, 2015, market participants must report their wholesale energy market transactions admitted to trading at Organized Market Places, including orders to trade, to ACER. Market participants must either be approved by ACER as an RRM or report through a third-party RRM to fulfill the obligation. Further reporting obligations come into effect on April 7, 2016, which will require market participants to report OTC standard and non-standard supply contracts and transportation contracts.

The announcement is available at: <http://www.acer.europa.eu/Media/News/Pages/ACER-approves-first-third-party-Registered-Reporting-Mechanisms-and-invites-stakeholders-to-a-workshop-on-REMIT-implementation.aspx>.

### Financial Stability Board Reports on Implementation of OTC Derivative Reforms

On July 24, 2015, the Financial Stability Board published its ninth report on the implementation of OTC derivatives reforms. The report notes that implementation of the reforms continues to progress but that challenges do still exist. Issues that are being addressed at international level include harmonization of transaction reporting, a framework for uniform trade and product identifiers, coordination on CCP resilience and cross-border regulatory issues. The FSB will continue to monitor and report on implementation of the reforms including the effects thereof.

The FSB's report is available at: <http://www.financialstabilityboard.org/wp-content/uploads/OTC-Derivatives-Ninth-July-2015-Progress-Report.pdf>.

## Financial Services

### UK Government Consults on Further Reforms to the UK Regulatory Architecture

On July 21, 2015, the UK Government launched a consultation on proposed amendments to the governance and regulatory architecture in line with the announcement made alongside the Queen's speech in May about a new Bank of England Bill. The proposals include ending the subsidiary status of the Prudential Regulation Authority by bringing it within the BoE and calling it the Prudential Regulation Committee. The PRA's functions would transfer to the BoE and the PRC would have the responsibility for exercising them, retaining the independence of the PRA to make rules, policies and supervisory decisions. The new PRC would be set up on the same basis as the Monetary Policy Committee of the BoE. Other proposals include: (i) formalizing the working relationship established between HM Treasury and the BoE for coordination in a financial crisis and the development of resolution strategies for banks and large investment firms; (ii) adjusting the statutory status of the Financial Policy Committee from a sub-Committee of the Court of Directors of the BoE to a Committee of the BoE in line with the MPC; (iii) transferring responsibility for setting the BoE's financial stability strategy from the Court of the BoE to the FPC; and (iv) decreasing the size of the Court and including the new Deputy Governor position for Markets and Banking. The consultation is open until September 11, 2015.

The consultation paper is available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/447140/bank\\_of\\_england\\_bill\\_v3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/447140/bank_of_england_bill_v3.pdf).

### **FX Working Group Established to Improve Global FX Market Standards**

On July 24, 2015, the Markets Committee of the Bank for International Settlements announced that the Foreign Exchange Working Group has been established. The objective of the FX Working Group is to strengthen code of conduct standards and principles in FX markets through the establishment of a single global code of conduct and related principles to ensure increased adherence to the code.

The announcement is available at: <http://www.bis.org/press/p150724.htm>.

### **Final Global Criteria for Simple, Transparent and Comparable Securitizations**

On July 23, 2015, the Basel Committee and the International Organization of Securities Commissions published final criteria for identifying simple, transparent and comparable securitizations. The aim of the criteria is to assist parties to a securitization to assess the risk involved across similar products, although they do not serve as a substitute for investor due diligence. The criteria are non-exhaustive and non-binding.

The final criteria are available at: <http://www.bis.org/bcbs/publ/d332.pdf>.

## **Funds**

### **EU Proposed Guidelines on Sound Remuneration Policies for Funds**

On July 23, 2015, the European Securities and Markets Authority published proposed guidelines on sound remuneration policies under the Undertakings for the Collective Investment of Transferable Securities Directive, known as UCITS V. A minor revision of the guidelines on sound remuneration policies under the Alternative Investment Fund Managers Directive, known as AIFMD, is also proposed. The proposed UCITS V guidelines are based on the Guidelines on sound remuneration practices developed under AIFMD. ESMA intends to publish a final report and guidelines in Q1 2016 ahead of the implementation deadline for the UCITS V Directive of March 18, 2016. The consultation is open until October 23, 2015.

The consultation paper is available at: <http://www.esma.europa.eu/news/ESMA-consults-UCITS-remuneration-guidelines?t=326&o=home>.

### **UK Government Proposes to Amend Limited Partnership Legislation**

On July 23, 2015, the UK Government published proposals to amend the Limited Partnership Act 1907 as it applies to funds. The aim of the proposals is to remove unnecessary legal complexity and administrative burdens so as to ensure that the UK limited partnership remains the market standard for European private equity and venture capital funds and other private funds. The proposals include: (i) for private fund vehicles that are limited partnerships to be designated as private fund limited partnerships upon registration; (ii) adding a non-exhaustive list of activities that a limited partner of a private fund limited partnership may carry out without being considered to take part in the management of the business; (iii) removing the requirement for limited partners in private funds to make capital contributions; (iv) allowing the partners in a private fund to agree who should wind up the limited partnership and removing the requirement to obtain a court order; and (v) removing the requirement for certain details to be provided when a private fund is established as a limited partnership. The consultation is open until October 5, 2015.

The consultation paper is available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/447458/Proposal\\_on\\_using\\_LRO\\_for\\_LimPart\\_codoc.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/447458/Proposal_on_using_LRO_for_LimPart_codoc.pdf) and the draft amendment instrument is available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/447428/Draft\\_LRO\\_Stat\\_Instr.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/447428/Draft_LRO_Stat_Instr.pdf).

## **People**

### **US Commodity Futures Trading Commission Appoints Director of the Division of Swap Dealer and Intermediary Oversight**

On July 24, 2015, the CFTC announced the appointment of Eileen T. Flaherty as Director of the Division of Swap Dealer and Intermediary Oversight.

### **Meredith Fuchs Named Acting Deputy Director of the US Consumer Financial Protection Bureau**

On July 22, 2015, the US Consumer Financial Protection Bureau announced that Meredith Fuchs will serve as Acting Deputy Director when Deputy Director Steve Antonakes departs the agency at the end of July. Mr. Antonakes currently serves as both Deputy Director for the Bureau and Associate Director for the Division of Supervision, Enforcement and Fair Lending. Earlier this month, Ms. Fuchs announced her intention to step down as General Counsel, but she will continue to serve as General Counsel and Acting Deputy Director until a permanent replacement is selected for each position. David Bleicken, Deputy Associate Director for Supervision, Enforcement and Fair Lending, will serve as Acting Associate Director for that division while a search for a replacement is conducted.

### **New Chair of FCA Practitioner Panel**

The FCA announced that Antonio Simoes, Chief Executive Officer for HSBC in the UK, will become Chair of the FCA Practitioner Panel from August 1, 2015. Mr. Simoes will succeed Alison Brittain, former Group Director of Retail at Lloyds Banking Group.

### **UK Banking Standards Board Announces New Appointment to Board**

On July 27, 2015, the UK Banking Standards Board announced the appointment of Saker Nusseibeh, CEO of Hermes Investment Management, to its Board from September 2015.

### **UK Prudential Regulation Authority Announces New Appointments to Board**

On July 27, 2015, the BoE announced the appointment of David Thorburn and Dr Norval Bryson as independent members of the Board of the PRA, effective September 1, 2015.

## **Upcoming Events**

July 28, 2015: US House of Representatives Committee on Financial Services will meet to conduct a hearing entitled "The Dodd-Frank Act Five Years Later: Are We More Prosperous?"

July 28, 2015: The House Homeland Security Committee will hold a hearing on "Promoting and Incentivizing Cybersecurity Best Practices"

July 29, 2015: US Senate Committee on Banking, Housing and Urban Affairs Subcommittee on Financial Institutions and Consumer Protection will meet to conduct a hearing entitled "The Role of Bankruptcy Reform in Addressing Too-Big-To Fail."

July 29, 2015: SEC outreach program to aid firms in compliance with Regulation Systems Compliance and Integrity.

July 29, 2015: The House Agriculture Committee is hold a hearing entitled, "Dodd-Frank Turns Five: Assessing the Progress of Global Derivatives Reforms"

July 29, 2015: CFTC's Energy and Environmental Markets Advisory Committee public meeting.

July 30, 2015: The House Intelligence Committee will hold a hearing on "World Wide Cyber Threats."

August 3, 2015: FCA Call for Input event on regulatory barriers to innovation in digital and mobile solutions: payment services and systems, banks and credit unions, AML and KYC.

August 11, 2015: FCA Call for Input event on regulatory barriers to innovation in digital and mobile solutions—retail investment advice and asset management, mobile network providers and technology devices industry, insurance brokers and providers.

August 20, 2015: EBA Public Hearing on guidelines for the prudential assessment of acquisitions of qualifying holdings in the financial sector.

September 1, 2015: EBA Public Hearing on conditions for national regulators to raise risk weights and loss given default floors for mortgage exposures.

September 8, 2015: ACER public workshop on REMIT implementation and disclosure of inside information.

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:

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