

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

CFTC Provides No-Action Relief for Swap Execution Facilities from Certain Block Trade Requirements

On September 19, 2014, the US Commodity Futures Trading Commission's ("CFTC") Division of Market Oversight issued time-limited no-action relief for Swap Execution Facilities ("SEFs") from certain block trade requirements. The CFTC no-action relief specifically exempts SEFs from the "occurs away" requirement under CFTC Regulation 43.2 and allows SEFs to facilitate the execution of block trades on non-Order Book trading systems or platforms subject to certain conditions outlined in the no-action letter. The time-limited no-action relief granted by the CFTC will end on December 15, 2015.

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

<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-118.pdf>.

CFTC Approves Final Rule and Proposed Rule at an Open Meeting

On September 17, 2014, the CFTC approved, by a unanimous vote at an Open Meeting, the Final Rule on Exclusion of Utility Operations-Related Swaps with Utility Special Entities from De Minimis Threshold for Swaps with Special Entities. The CFTC also approved the Proposed Rule on Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants.

Additional information on the CFTC Open Meeting is available at:

<http://www.cftc.gov/PressRoom/PressReleases/pr7004-14>.

FSB Reports on Jurisdictions' Ability to Defer to Each Other's OTC Derivatives Market Regulatory Regimes

On September 18, 2014, the Financial Stability Board ("FSB") published its report to G20 Finance Ministers and Central Bank Governors entitled "Jurisdictions'

ability to defer to each other's OTC derivatives market regulatory regimes." The report summarizes the responses to the FSB's request for jurisdictions to set out their OTC derivatives frameworks, in particular, the framework for deference to another jurisdiction's regulatory requirements applicable to trade repositories, central counterparties, trading platforms and market participants.

Jurisdiction-specific information is detailed in annexes to the report. The FSB's conclusions include, amongst others, that: (i) more jurisdictions have authority to exercise deference for infrastructure providers than for market participants; (ii) jurisdictions retain their authority by requiring entities to register or be licenced even if deference is a possibility; (iii) most jurisdictions consider the outcome of the foreign regulatory regime rather than requiring identical regulations; and (iv) although most jurisdictions have authority to make decisions deferring to another regime, few have determined to do so.

The report is available at:

http://www.financialstabilityboard.org/publications/r_140918.pdf and the annexes are available at:

http://www.financialstabilityboard.org/publications/c_140918.htm.

IOSCO Consults on Risk Mitigation Standards for Non-Centrally Cleared OTC Derivatives

On September 17, 2014, the International Organization for Securities Commission ("IOSCO") launched a consultation on proposed risk mitigation standards for non-centrally cleared OTC derivatives. IOSCO is proposing nine standards aimed at mitigating the risks in uncleared OTC derivatives, in addition to the margin requirements developed by the Basel Committee for Banking Standards and IOSCO in September 2013. IOSCO recognizes that some jurisdictions have already implemented or are implementing requirements in this area. The proposals call for authorities to implement the standards as soon as possible. IOSCO also notes that, due to the global nature of the derivatives markets, any regulatory standards should be compatible across jurisdictions to avoid arbitrage, conflicting rules and to level the playing field. The proposed standards cover scope of coverage, trading relationship documentation, trade confirmation, valuation with counterparties, reconciliation, portfolio compression, dispute resolution, implementation and cross-border transactions. Responses to the consultation are due by October 17, 2014.

The consultation paper is available at:

<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD450.pdf>.

Compensation

UK Regulators Consult on Amendments to Data Collection of Remuneration Practice

On September 22, 2014, the Prudential Regulation Authority ("PRA") and the Financial Conduct Authority ("FCA") published a joint consultation paper on proposals to amend their current approach to data collection of remuneration practices and reporting requirements. The proposals affect all banks, building

societies, PRA-designated investment firms and IPRU investment firms. The PRA and FCA are, amongst other things, proposing revised rules and amendments to the template for collecting information from firms for the Remuneration Benchmarking Information Report and the High Earners Report. The proposals are in response to the guidelines published by the European Banking Authority (“EBA”) on July 16, 2014 which include amendments to the content of the data collection as well as changes required pursuant to the Capital Requirements Regulation and Capital Requirements Directive (together, “CRD IV”). Responses to the consultation are due by October 31, 2014. A Policy Statement, including final rules, is expected in November 2014. The PRA and FCA will be requesting data for the 2013 performance year separately, prior to the new rules being in place. Such data is due to be submitted to the EBA by November 30, 2014.

The consultation paper is available at:

<http://www.bankofengland.co.uk/prd/Documents/publications/cp/2014/cp1714.pdf>.

Bank Prudential Regulation & Regulatory Capital

Federal Reserve Board Issues FOMC Statement on Policy Normalization Principles and Plans

On September 17, 2014, the Federal Open Market Committee (“FOMC”) of the Board of Governors of the Federal Reserve System (“Federal Reserve Board”) issued a statement summarizing the discussion in the recent meeting of the FOMC regarding ways to normalize the stance of monetary policy and the Federal Reserve’s securities holdings. The statement summarized four key elements of the intended approach when the FOMC determines that it is appropriate to begin normalizing the stance of monetary policy, namely: (i) the FOMC will determine the timing and pace of policy normalization in a way that promotes its statutory mandate of maximum employment and price stability; (ii) the FOMC will reduce the Federal Reserve’s securities holdings gradually, primarily by ceasing to reinvest repayments of principal on securities held in the System Open Market Account; (iii) the FOMC intends to ensure that the Federal Reserve will hold no more securities than necessary to implement monetary policy and that the Federal Reserve will hold primarily Treasury securities; and (iv) the policy outlined by the FOMC will remain subject to adjustment in light of future economic and financial developments.

The full text of the FOMC policy release is available at:

<http://www.federalreserve.gov/newsevents/press/monetary/2014monetary.htm>.

Recovery & Resolution

EBA Proposes Guidelines for National Regulators on Early Intervention Triggers

On September 22, 2014, the EBA published proposed guidelines for national regulators on early intervention triggers under the Banking Recovery and Resolution Directive (“BRRD”). The proposed guidelines aim to ensure the

consistent application by national regulators of triggers for the decision on whether early intervention measures should be utilized and to provide guidance to national regulators on the circumstances in which early intervention measures should be considered. The early intervention measures are set out in the BRRD and are available to national regulators when a firm infringes or is likely to infringe the requirements of CRD IV (including capital, liquidity and leverage standards) or the authorization and operating conditions for investment firms set out in the new Markets in Financial Instruments Directive or certain provisions of the Markets in Financial Instruments Regulation (relating to transparency for equity instruments, certain transparency obligations for systematic internalisers and investment firms trading OTC and transaction reporting requirements). The measures included in the BRRD are in addition to the supervisory powers available to national regulators under CRD IV. The EBA's consultation on the proposed guidelines is open until December 22, 2014.

The consultation paper is available at:

<http://www.eba.europa.eu/documents/10180/820129/EBA-CP-2014-21+%28CP+on+GL+on+early+intervention++triggers%29.pdf>.

EBA Proposes Guidelines for National Regulators on Factors to Consider when Deciding if a Firm Is Failing or Likely to Fail

On September 22, 2014, the EBA published proposed guidelines for national regulators on the circumstances in which a firm may be deemed to be failing or likely to fail. The proposed guidelines set out the factors that national regulators should consider when assessing whether a firm is infringing or likely to infringe the requirements for its continued authorization, if the firm's assets are less than its liabilities or if it will be unable to pay its debts as they fall due. The list of factors in the proposed guidelines is non-exhaustive, thereby, allowing national regulators to consider other elements indicating that a firm is failing or likely to fail. Responses to the EBA's consultation paper are due by December 22, 2014.

The consultation paper is available at:

<http://www.eba.europa.eu/documents/10180/820069/EBA-CP-2014-22+%28CP+on+GL+on+failing+or+likely+to+fail%29.pdf>.

Credit Ratings

ESMA's Final Advice on the Appropriateness of Developing a European Creditworthiness Assessment for Sovereign Debt

On September 17, 2014, the European Securities and Markets Authority ("ESMA") published its final technical advice to the European Commission on the appropriateness of developing a European creditworthiness assessment for sovereign debt. The Commission must submit a report to the European Parliament and to the Council by the end of 2014 on the issue. ESMA's advice highlights the following essential criteria for the European Commission's consideration: (i) the rating process should be independent; (ii) the review function should be

independent of the credit rating activities; (iii) confidentiality of pre-rating information is critical; and (iv) sufficient resources are required to conduct rigorous ratings and ongoing monitoring.

ESMA's report is available at: <http://www.esma.europa.eu/content/Technical-Advice-accordance-Article-39b-2-CRA-Regulation>.

Financial Services

FINRA Board of Governors Approves Equity Trading and Fixed Income Rule Proposals

On September 19, 2014, the Board of Governors of the Financial Industry Regulatory Authority ("FINRA") approved a series of proposed rule changes regarding high-speed and algorithmic trading. The Board also approved initiatives to improve transparency and execution quality in fixed income markets.

Regulatory Notices authorized by the Board include the following regulatory initiatives: (i) a registration requirement for associated persons involved in the preparation of algorithmic strategies; (ii) the expansion of Alternative Trading System ("ATS") transparency; (iii) the synchronization of firm computer system business clocks to the National Institute of Standards and Technology ("NIST") atomic clock; (iv) firm supervisory obligations for algorithmic trading strategies; (v) the identification of trade sequencing of certain OTC trades in NMS stocks; (vi) confirmation of disclosure of pricing in same-day principal trades of retain size; (vii) reporting by ATS to FINRA regarding fixed income quotation information; and (viii) the requirement that a recruiting firm provide FINRA-created educational communication to former retail customers of a transferring representative who are considering transferring assets to that firm.

A full list of the rulemaking items approved by FINRA's Board is available at: <http://www.finra.org/Industry/Regulation/Guidance/CommunicationstoFirms/P600807>.

G20 Communiqué

On September 21, 2014, a Communiqué of the G20 Finance Ministers and Central Bank Governors was published following the meeting held in Cairns, Australia. The Communiqué notes that the following work is in progress ahead of the Brisbane Summit in November 2014: (i) a plan to ensure greater consistency in the application by banks of the Basel III standards; (ii) a proposal from the FSB on a common standard for total loss absorbing capacity for globally systemic banks and for cross-border recognition of resolution actions; (iii) FSB final proposals for its shadow banking framework; and (iv) the FSB's review of its structure of representation that responds to emerging markets.

The Communiqué is available at: https://www.g20.org/sites/default/files/g20_resources/library/September%202014%20communiqué%20-%20FINAL_0.pdf.

FSB Report on Financial Reforms Package

On September 21, 2014, the FSB's report (dated September 15, 2014) to the G20 Finance Ministers and Central Bank Governors on financial reforms was published. The report: (i) provides a brief update on the global reform initiative; (ii) requests support for the proposals for a common standard for total loss absorbing capacity for globally systemic banks and on cross-border recognition of resolution actions; (iii) sets out the FSB's thoughts on how to change the structure of its representation to help build a system of common international standards; and (iv) describes how the FSB sees its role following finalization of the global financial reform framework.

The report is available at:

http://www.financialstabilityboard.org/publications/r_140921.pdf.

FSB Summarizes Progress on Implementation of Regulatory Reforms in 2014

On September 18, 2014, the FSB issued a press release announcing the outcomes of its meetings in Cairns to discuss vulnerabilities in the financial system and policy work for financial reform. The announcement sets out progress the FSB has made in substantially completing the financial regulatory reforms, including shadow banking, resolution and recovery of global systemically important banks, derivatives regulation, benchmark reform, accounting, auditing and disclosure and implementation monitoring.

The announcement is available at:

http://www.financialstabilityboard.org/press/pr_140918.pdf.

Consumer Protection

Federal Financial Institutions Examination Council Publishes 2013 Data on Mortgage Lending

On September 22, 2014, the Federal Financial Institutions Examination Council ("FFIEC") published data on mortgage lending transactions at the 7,190 US financial institutions covered by the Home Mortgage Disclosure Act. Institutions that reported data include banks, savings associations, credit unions and mortgage companies. The data covers, among other things, a summary of 2013 lending activity, applications, originations, purchases and sales of loans, denials and other actions related to applications. In addition, the data released by the FFIEC includes disclosure statements from each reporting financial institution, aggregate data for each metropolitan statistical area and nationwide summary statistics regarding lending patterns.

The FFIEC data is available at: <http://www.ffiec.gov/hmda>.

CFPB Proposes New Rule to Oversee Nonbank Auto Finance Companies

On September 17, 2014, the Consumer Financial Protection Bureau ("CFPB") issued a new proposed rule that would extend CFPB oversight to nonbank auto finance companies that make, acquire or refinance 10,000 or more loans or leases

in a year for compliance with federal consumer financial law. The CFPB proposal would: (i) extend oversight to the disclosure and marketing that non-bank auto finance companies give to consumers; (ii) monitor the information provided by an auto finance company to credit bureaus; and (iii) examine the debt collection tactics of auto finance companies. Comments on the CFPB proposed rule should be submitted no later than November 16, 2014.

The full text of the CFPB proposed rule is available at:

http://www.consumerfinance.gov/f/201409_cfpb_proposed-rule_lp-v_auto-financing.pdf.

Enforcement

SEC Announces Largest Whistleblower Award to Date

On September 22, 2014, the Securities and Exchange Commission (“SEC”) announced the award of more than \$30 million to a whistleblower who provided key original information that led to a successful SEC enforcement action. The SEC’s whistleblower program rewards original information that results in an SEC enforcement action with sanctions in excess of \$1 million with a percentage (between 10 to 30 percent) of the penalties collected in a case.

The full text of the SEC order determining the whistleblower amount is available at: <http://www.sec.gov/rules/other/2014/34-73174.pdf>.

People

On September 22, 2014, the SEC announced the appointment of Jason S. Patil as an Administrative Law Judge.

Events

October 8, 2014: ESMA open hearing on the Market Abuse Regulation.

October 10, 2014: ESMA open hearing on issues relating to periodic information to be submitted to ESMA by Credit Rating Agencies.

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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