



## 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.

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## Bank Prudential Regulation & Regulatory Capital

### European Commission Issues Call for Advice on Net Stable Funding Requirements and Leverage Ratio

On August 19, 2015, the European Banking Authority issued a press release stating that it will conduct an analysis on the Net Stable Funding Requirements and Leverage Ratio under the Capital Requirements Regulation. This analysis is further to a recent call for advice issued by the European Commission to the EBA, seeking the EBA's guidance so that it can prepare legislative proposals, if necessary, on technical issues that are not explicitly mentioned in the CRR. The Commission is seeking the EBA's analysis on whether it is adequate to establish different NSFR and LR requirements for different types of institutions. This analysis would consider whether different firms could have, depending on their risk profile, size and business model: (i) different NSFR calibrations; (ii) simplified NSFR and LR requirements; or (iii) exemptions from the NSFR and LR requirements. The Commission also seeks analysis on other issues including: (i) the costs and benefits of excluding certain types of firms from the NSFR and LR requirements; (ii) the effects of the NSFR requirements on bank lending in the EU; and (iii) the impact of the NSFR on clearing, settlement and custody activities, on underwriting and market making, on business models and financing structures of institutions as well as on its interaction with risk-based capital requirements. The EBA must submit the reports on the NSFR and LR to the Commission by December 31, 2015 and October 31, 2016 respectively, although it plans to submit the LR report by July 2016.

The EBA's press release and the Commission's call for advice are available at: <http://www.eba.europa.eu/-/eba-to-conduct-further-analysis-on-net-stable-funding-requirements-and-leverage-ratio>; and <http://www.eba.europa.eu/documents/10180/1162591/Call+for+advice.pdf>.

## Derivatives

### US Commodity Futures Trading Commission Proposes Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps

On August 19, 2015, the US Commodity Futures Trading Commission proposed amendments to existing regulations in order to provide further clarity to swap counterparties and registered entities concerning their reporting obligations for cleared swap transactions. In addition, the proposed amendments are intended to improve the efficiency of data collection and maintenance associated with the reporting of the swaps involved in a cleared swap transaction.

Among other things, the proposed rules are intended to provide clarity as to which counterparty to a swap is responsible for reporting creation and continuation data for certain swap transactions, including clarification as to whose obligation it is to report the extinguishment of a swap upon its acceptance by a derivatives clearing organization for clearing. The CFTC believes the proposed rules will reduce the probability of double-counting notional exposures and improve the capability to trace the history of a cleared swap transaction from execution between the original counterparties to clearing.

The proposed rule would modify Part 45 of the CFTC's regulations, which the CFTC adopted on December 20, 2011. The comment period ends 60 days after the publication in the Federal Register.

The press release is available at: <http://www.cftc.gov/PressRoom/PressReleases/pr7215-15>.

The draft proposed rule is available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister081915.pdf>.

The factsheet is available at: [http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/clearedswap\\_factsheet081915.pdf](http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/clearedswap_factsheet081915.pdf).

Original swap reporting final rule (December 2011):

<http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-33199a.pdf>.

### **Input Sought for Development of a Global Unique Transaction Identifier**

On August 19, 2015, the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions launched a consultation aimed at developing guidance for a uniform global unique transaction identifier. The development of a UTI was identified in September 2014 by the Financial Stability Board as one of the critical elements for a mechanism to produce and share global aggregated derivatives reporting data, along with the development a unique product identifier and the harmonization of certain other key data elements. Numerous countries have implemented legislative and regulatory requirements for the reporting of OTC derivatives aimed at improving transparency, mitigating systemic risk and preventing market abuse. To date 26 trade repositories have been established in 16 jurisdictions. The aggregation of data from those trade repositories is key to giving authorities a comprehensive view of the OTC derivatives market and activity and the purpose of the global UTI would be to uniquely identify each OTC derivative transaction required by authorities to be reported to trade repositories. The CPMI and IOSCO are seeking feedback that will assist in developing guidance on a UTI definition, the structure and format of a UTI and responsibility for generating a UTI. Implementation of the final guidance will be the subject of further work by the FSB. The consultation closes on September 30, 2015.

The consultation paper is available at: <http://www.bis.org/cpmi/publ/d131.pdf>.

### **Enforcement**

#### **US Securities and Exchange Commission Charges Citigroup Global Markets for Compliance and Surveillance Failures**

On August 19, 2015, the US Securities and Exchange Commission announced that Citigroup Global Markets Inc. (CGMI) agreed to pay a \$15 million penalty in connection with settling charges for failing to enforce policies and procedures to prevent and detect securities transactions that could involve the misuse of material, nonpublic information. Additionally, CGMI agreed that they had failed to implement policies and procedures to prevent and detect principal transactions conducted by an affiliate.

According to the SEC's order, CGMI violated Section 15(g) of the Securities Exchange Act of 1934 requiring brokers and dealers to establish, maintain and enforce policies and procedures to prevent the misuse of material, nonpublic information. The SEC's order also found that CGMI violated Section 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-(7) requiring registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules. In addition to paying the penalty, CGMI has agreed to hire a consultant to review and recommend improvements to the firm's trade surveillance and advisory account order handling and routing.

The press release is available at: <http://www.sec.gov/news/pressrelease/2015-171.html>.

The SEC order is available at: <http://www.sec.gov/litigation/admin/2015/34-75729.pdf>.

#### **Citigroup Affiliates to Pay \$180 Million to Settle Hedge Fund Fraud Charges with US Securities and Exchange Commission**

On August 17, 2015, the SEC announced that two Citigroup affiliates agreed to bear the costs of distributing \$180 million in settlement funds to harmed investors. In an investigation, the SEC found evidence that CGMI and Citigroup Alternative Investments LLC (CAI) defrauded investors in the ASTA/MAT fund and the Falcon fund by claiming they were safe, low-risk and suitable for traditional bond investors. The Citigroup affiliates were found to have made false and misleading representations to investors in the two hedge funds that were not in line with the disclosures made in

marketing documents and written materials provided to such investors. Even as the funds began to collapse as a result of the financial crisis, the Citigroup affiliates did not accurately and plainly disclose the deteriorating condition of the funds.

Both CGMI and CAI consented to the SEC order, agreed to be censured and must cease and desist from committing future violations of Sections 17(a)(2) and (3) of the Securities Act of 1933, Section 206(2) of the Investment Advisers Act of 1940 (in the case of CGMI) and Section 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 (in the case of CAI).

The press release is available at: <http://www.sec.gov/news/pressrelease/2015-168.html>.

### **US Securities and Exchange Commission Charges BNY Mellon with Foreign Corrupt Practices Act Violations**

On August 18, 2015, the SEC announced that BNY Mellon has agreed to pay \$14.8 million to settle charges that it violated the Foreign Corrupt Practices Act by providing student internships to family members of foreign government officials affiliated with a Middle Eastern sovereign wealth fund. The SEC's order finds that BNY Mellon lacked adequate internal controls to prevent and detect the improper hiring practices. According to the order, BNY Mellon did not evaluate or hire the family members through its existing, highly competitive internship programs that have rigorous hiring standards.

The press release is available at: <http://www.sec.gov/news/pressrelease/2015-170.html> and the SEC order is available at: <http://www.sec.gov/litigation/admin/2015/34-75720.pdf>.

## **Financial Market Infrastructure**

### **Payment Systems Regulator Survey on Payment Service Providers and Indirect Payment Systems**

On August 19, 2015, the UK Payment Systems Regulator announced that it is conducting a survey aimed at payment service providers who access payment systems indirectly. The survey is intended to inform the PSR's consideration of whether action is required in the context of its two market reviews, which are on: (i) the supply of indirect access to payment systems, launched in May 2015; and (ii) the ownership and competitiveness of infrastructure provision (the hardware, software, secure telecommunications network and operating environments that are used to manage and operate payment systems), first announced in November 2014. Responses to the survey are due by September 23, 2015.

The survey is available at: <https://www.psr.org.uk/psr-publications/market-reviews/psp-survey-august-2015>.

## **Financial Services**

### **European Commission Publishes Management Plans for Economic and Financial Affairs, Financial Stability and Capital Markets Union**

On August 18, 2015, the European Commission published the 2015 Management Plans for the Directorate-General of Economic and Financial Affairs (ECFIN) and the DG for Financial Stability, Financial Markets and Capital Markets Union (FISMA) which replaces the financial services directorates of the DG for Internal Market and Services (which ceased to exist in 2014). These DGs provide specialized services to the European Commission as departments of the Commission. The Management Plans include the mission statements, objectives and strategies. ECFIN's objectives include to foster jobs, growth and investment and to promote prosperity beyond the EU. FISMA's objectives include to ensure that the EU financial sector is adequately supervised, stable, transparent and is conducive to growth and jobs, that effective investor protection is applied through the use of strict conduct and disclosure rules, and that the banking, insurance and pension sectors are stable and resilient due to adequate prudential, supervisory and resolution regimes.

The management plans are available at: [http://ec.europa.eu/atwork/synthesis/amp/doc/fisma\\_mp\\_en.pdf](http://ec.europa.eu/atwork/synthesis/amp/doc/fisma_mp_en.pdf) and [http://ec.europa.eu/atwork/synthesis/amp/doc/ecfin\\_mp\\_en.pdf](http://ec.europa.eu/atwork/synthesis/amp/doc/ecfin_mp_en.pdf).

## Recovery & Resolution

### US Federal Reserve Bank of Richmond Published An Economic Brief Titled “Living Wills for Systemically Important Financial Institutions: Some Expected Benefits and Challenges”

The Federal Reserve Bank of Richmond published an August Economic Brief titled “Living Wills for Systemically Important Financial Institutions: Some Expected Benefits and Challenges.” The brief considers challenges faced by regulators who must oversee the transition of systemically important financial institutions to resolvability, and some possible approaches to managing them.

Challenges include ascertaining short-term financing needs, organizational complexity of SIFIs and cross-border resolution hurdles. However, regulators may find that their authority under Dodd-Frank to impose changes in firm structures, together with market forces that may incentivize more streamlined organizational structures, may offer means to address some of these challenges.

The economic brief is available at: [https://www.richmondfed.org/-/media/richmondfedorg/publications/research/economic\\_brief/2015/pdf/eb\\_15-08.pdf](https://www.richmondfed.org/-/media/richmondfedorg/publications/research/economic_brief/2015/pdf/eb_15-08.pdf).

### Single Resolution Board Publishes Rules of Procedure

On August 19, 2015, the Single Resolution Board published a decision from its plenary and executive sessions of April 29, 2015 adopting its rules of procedure. The SRB works closely with the resolution authorities of EU member states that participate in the Single Supervisory Mechanism, the European Central Bank and the European Commission to ensure the orderly resolution of banks that are failing or likely to fail and to prevent any negative impact on the economy that could arise from such failings. The SRB has been operational in developing resolution plans for banks since January 1, 2015 and will be fully operational with a comprehensive set of resolution powers from January 2016. The SRB’s rules of procedure supplement the Single Resolution Mechanism Resolution and include details on the SRB’s chairmanship, attendance of members at meetings, decision-making and voting.

The SRB decisions are available at: [http://srb.europa.eu/docs/srb-rules-of-procedure-plenary-session\\_en.pdf](http://srb.europa.eu/docs/srb-rules-of-procedure-plenary-session_en.pdf) and [http://srb.europa.eu/docs/srb-rules-of-procedure-executive-session\\_en.pdf](http://srb.europa.eu/docs/srb-rules-of-procedure-executive-session_en.pdf).

## People

### Shelly Luisi Named Associate Director in the Division of Corporation Finance

On August 19, 2015, the SEC named Shelly Luisi the Associate Director in the Division of Corporation Finance. In her new role, Ms. Luisi will oversee the Disclosure Standards Office, which conducts research and assesses the Division of Corporation Finance program created to selectively review public-company filings. She begins her new role in September.

The press release is available at: <http://www.sec.gov/news/pressrelease/2015-172.html>.

### Robert Steven Kaplan Named President and Chief Executive Officer of the Federal Reserve Bank of Dallas

On August 17, 2015, the Federal Reserve Bank of Dallas announced the appointment of Robert Steven Kaplan as its president and CEO. In this role, Kaplan will represent the Eleventh Federal Reserve District on the Federal Open Market Committee and will oversee the 1,200 employees of the Federal Reserve Bank of Dallas. His appointment is effective September 8, 2015.

The press release is available at: <http://www.dallasfed.org/news/releases/2015/nr150817.cfm>.

## Upcoming Events

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

September 4, 2015: EBA Public Hearing on Call for Evidence on bank lending to Small and Medium-sized Enterprises and the capital reduction factor for loans to SMEs known as the Supporting Factor (registration closed).

September 8, 2015: Agency for the Cooperation of Energy Regulators public workshop on the implementation of the Regulation on Energy Market Integrity and Transparency and disclosure of inside information (registration deadline: September 4, 2015).

September 23, 2015: FCA and Organization for Economic Co-operation and Development conference to discuss practical regulation, research and policy for consumer financial protection (registration closed).

September 24, 2015: European Central Bank information session on TARGET2-Securities.

October 7, 2015: EBA Public Hearing on proposed guidelines on cooperation agreements between deposit guarantee schemes (registration deadline: September 16, 2015).

October 12, 2015: EBA Public Hearing on CVA exemption of NFCs established in a third country (registration deadline: September 21, 2015).

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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