

## 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 Extends No-Action Relief for Futures Commissions Merchants from Requirement to Obtain an Acknowledgement Letter from Certain Depositories**

On October 16, 2014, the US Commodity Futures Trading Commission's ("CFTC") Division of Swap Dealer and Intermediary Oversight announced the extension of previously granted no-action relief from compliance with CFTC regulations requiring futures commissions merchants to obtain acknowledgement letters from certain depositories. The no-action relief has been extended until December 31, 2014.

The CFTC no-action letter is available at:

<http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-127.pdf>.

#### **CFTC Announces Self-Executing Registration No-Action Relief for Delegating CPOs**

On October 15, 2014, the CFTC's Division of Swap Dealer and Intermediary Oversight announced the provision of self-executing registration no-action relief for certain commodity pool operators ("CPOs") who delegate certain activities to a registered CPO and meet the conditions specified in the CFTC no-action letter. In the no-action letter, the CFTC also stated that it will no longer consider requests for no-action relief pursuant to the approach described in previous no-action Letter 14-69, including any requests submitted to the CFTC that were still pending. For more details, you may like to read our client note at:

<http://www.shearman.com/~media/Files/NewsInsights/Publications/2014/10/CFTC-Staff-Issues-Revised-NoAction-Relief-from-CPO-Registration-for-Certain-Delegating-CPOs-IF-101714.pdf>.

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

<http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-126.pdf>.

### SEC Releases Data on the Reporting and Dissemination of Security-Based Swap Information

On October 17, 2014, the US Securities and Exchange Commission (“SEC”) published analyses of data on the reporting and dissemination of security-based swap transaction information. The analyses, performed by the staff in the SEC’s Divisions of Economic and Risk Analysis and the SEC’s Division of Trading and Markets, examine: (i) the effect of the CFTC’s mandated post-trade transparency in the index credit default swaps (“CDS”) market on total credit exposure, trading volume, and trade size in the index CDS market; and (ii) recent single-name CDS transactions, and if and how dealers may hedge any large notional exposures that result from executing trades with their customers.

The SEC analysis of post-trade transparency is available at:

<http://www.sec.gov/comments/s7-34-10/s73410-183.pdf>.

### Compensation

#### EBA Reports on Bonus Cap and Use of Role-Based Fixed Allowances

On October 15, 2014, the European Banking Authority (“EBA”) issued the findings of its investigation on discretionary remuneration practices across the EU banking sector in the form of a report and opinion. The EBA’s findings indicate that some firms use categorized role-based allowances in a way that can increase the fixed component of remuneration, and this allows for greater amounts of remuneration within the bonus cap. The EBA has requested that national supervisors ensure that the remuneration practices of firms on allowances comply with the Capital Requirements Directive and Capital Requirements Regulation (“CRDIV”).

The report states that 39 firms use role-based allowances that they classify as fixed remuneration. The EBA found that in most of these cases, firms had increased this fixed remuneration and introduced discretionary role-based allowances, which have had a bearing on the ratio between variable and fixed remuneration. In the opinion of the EBA, for a role-based allowance to be categorized as fixed remuneration, it must: (i) be predetermined; (ii) be permanent (i.e., maintained over time for the specific role and organizational responsibilities for which the allowance is granted); (iii) not provide incentives for risk-taking; (iv) be without prejudice to national law; and (v) be non-revocable. In addition, the allowance must not be subject to variations over time, other than by agreement between the parties (or as otherwise provided by applicable national law).

National regulators have until December 31, 2014 to ensure firms reassess their remuneration policies to be compliant with the criteria highlighted in the EBA report and with CRDIV. For more details, you may like to read our client note at:

<http://www.shearman.com/en/newsinsights/publications/2014/10/european-banking-authority-report>.

The EBA’s report is available at:

<http://www.eba.europa.eu/documents/10180/534414/EBA+Report+on+the+principles+on+remuneration+policies+and+the+use+of+allowances.pdf> and the EBA’s

opinion is available at:

<http://www.eba.europa.eu/documents/10180/657547/EBA-Op-2014-10+Opinion+on+remuneration+and+allowances.pdf>.

## Shadow Banking

### FSB Issues Framework for Haircuts on Non-Centrally Cleared Securities Financing Transactions

On October 14, 2014, the Financial Stability Board (“FSB”) issued a regulatory framework for haircuts on non-centrally cleared securities financing transactions. The aim of the framework is to limit risks building up in the shadow banking arena. The framework consists of qualitative standards to be integrated into regulatory standards for methodologies used by market participants providing securities financing to calculate haircuts on the collateral received. It also sets out a framework of numerical haircut floors applying to non-centrally cleared securities financing transactions where financing against collateral other than government securities is provided to non-banks. The framework document includes proposals (see Annex 4) setting out approaches for applying the framework of numerical haircut floors to non-bank to non-bank transactions backed by collateral other than government securities.

The document is available at:

[http://www.financialstabilityboard.org/publications/r\\_141013a.pdf](http://www.financialstabilityboard.org/publications/r_141013a.pdf).

## Bank Prudential Regulation & Regulatory Capital

### Federal Reserve Board Issues Final Rule on Capital Planning and Stress Testing

On October 17, 2014, the Federal Reserve Board issued a final rule modifying the regulations for capital planning and stress testing, and released summary instructions and guidance for the 2015 annual comprehensive capital analysis and review (“CCAR”). The final rule adjusts the timing for bank holding companies (“BHCs”) with total consolidated assets of \$50 billion or more to submit their capital plans and stress results. For the 2015 capital plan cycle, BHCs are required to submit capital plans on or before January 5, 2015. From 2016, BHCs required to submit capital plans and stress test results must submit those plans on or before April 5. In addition to the change in submission timing, the final rule includes modifications and clarifications to the existing capital plan and stress test rules. In particular, the final rule limits a BHC’s ability to make capital distributions to the extent that the BHC’s actual capital issuances are less than the amount indicated in its capital plan.

The summary CCAR instructions highlight a number of new elements to provide guidance on supervisory expectations around a BHC’s capital adequacy process and capital plan submissions, and also clarify how BHC subsidiaries of foreign banking organizations should incorporate compliance with intermediate holding company requirements into their capital plan projections. For the first time, the

CCAR instructions also include a discussion of common strengths and shortcomings identified in prior year capital plan submissions.

The instructions for the 2015 capital planning cycle are available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20141017a1.pdf> and the final rules amending the Capital Plan and Stress Test Rules are available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20141017a2.pdf>.

#### **Decision on Separation of ECB's Monetary Policy and Supervisory Functions published in OJ**

On October 18, 2014, the European Central Bank's ("ECB") Decision on the implementation of separation between the monetary policy and supervision functions of the ECB was published in the Official Journal of the European Union. The Decision entered into force on October 18, 2014 and sets out the arrangements related to the separation of the ECB's monetary policy from its supervisory functions.

The Decision is available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL\\_2014\\_300\\_R\\_0012](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2014_300_R_0012).

### **Recovery & Resolution**

#### **US and UK Regulators Meet to Discuss Key Components for the Resolution of a Global Systemically Important Bank**

On October 13, 2014, the heads of the Treasuries and financial regulatory bodies from both the United States and the United Kingdom met to discuss resolution strategies for a global systemically important bank under both US and UK resolution regimes.

The full text of the press release announcing the meeting is available at: <https://www.fdic.gov/news/news/press/2014/pr14084.html>.

#### **EBA Consults on Simple, Standard and Transparent Securitizations**

On October 14, 2014, the EBA published a discussion paper on simple, standard and transparent securitizations, in response to the European Commission's call for advice in December 2013 on the potential ways and merits of promoting a safe and stable securitization market. The EBA aims to shape a new class of prudentially sound securitization products that may become subject to specific regulatory recognition, and intends to use the three pillars (simplicity, standardization and transparency) as protection measures, to ensure that risks in securitizations unrelated to an underlying exposure are adequately mitigated. The EBA recognizes that a balance between overly lenient treatment of structurally risky transactions and excessively severe treatment of simple, standard and transparent transactions is needed. The EBA proposes to distinguish between "qualifying" securitizations and other securitizations and suggests that "qualifying" securitizations should be defined as meeting both its simple, standard and transparent criteria as well as its credit risk criteria. The EBA intends to provide its final technical advice to the Commission in the second quarter of 2015. The consultation closes on January 14, 2015.

The consultation paper is available at:

<http://www.eba.europa.eu/documents/10180/846157/EBA-DP-2014-02+Discussion+Paper+on+simple+standard+and+transparent+securitisations.pdf>.

### **FSB Consults on RRP for SIIs and Guidance on Identification of Critical Functions and Shared Services for SIIs**

On October 16, 2014, the FSB issued a consultation paper on recovery and resolution planning for Systemically Important Insurers (“SIIs”) and guidance on the identification of critical functions and critical shared services SIIs. The guidance deals with functions and services provided by insurance or reinsurance companies that could be systemically significant or critical were the SIIs to fail. It also aims to support resolution planning for global and other SIIs, as well as assist national authorities in implementing the recovery and resolution planning requirements set out in the FSB’s Key Attributes of Effective Resolution Regimes for Financial Institutions and the International Association of Insurance Supervisors’ policy measures for global SIIs.

The consultation proposes a framework for critical functions as well as one for critical shared services, and provides an indicative and non-exhaustive list of functions that could be identified as critical. The paper states that national authorities must carry out their own assessments in each case, while taking into consideration the characteristics of its own jurisdiction’s financial system, the economic and competitive landscape, and the range of functions provided by other insurers. The consultation closes on December 15, 2014.

The consultation is available at:

[http://www.financialstabilityboard.org/publications/c\\_141016.pdf](http://www.financialstabilityboard.org/publications/c_141016.pdf).

## **Financial Market Infrastructure**

### **HMT Consults on Designation of Payment Systems**

On October 14, 2014, HM Treasury (“HMT”) issued a consultation paper on the designation of payment systems for regulation by the Payment Systems Regulator (“PSR”), the new regulator charged with increasing competition and regulating retail payment systems in the UK. Under the Financial Services (Banking Reform) Act 2013 (“Banking Reform Act”), HMT is empowered to designate payment systems for regulation by the PSR. The consultation paper sets out the criteria for the designation, as well as those payment systems that HMT believes already meet the criteria and which it proposes to designate and bring within the powers of the PSR. HMT proposes to designate Bacs, CHAPS, Faster Payments, Link, Cheque and Credit, Northern Ireland clearing, Visa and MasterCard as payment systems. Some of these are already interbank payment systems regulated by the Bank of England. However, the Banking Reform Act expressly excludes the Bank of England from the scope of the PSR. The consultation closes on November 11, 2014. Designation will be effective from April 1, 2015, when the PSR becomes fully operational.

The consultation paper is available at:

<https://www.gov.uk/government/consultations/designation-of-payment-systems-for-regulation-by-the-payment-systems-regulator/designation-of-payment-systems-for-regulation-by-the-payment-systems-regulator>.

#### **CPMI and IOSCO Publish Final Report on Recovery of FMIs**

On October 15, 2014, the Committee on Payments and Market Infrastructures (“CPMI”) and the International Organization of Securities Commissions (“IOSCO”) issued a final report on the Recovery of Financial Market Infrastructures (“FMIs”). The report directs FMIs, such as central counterparties, on developing recovery plans that set out how a FMI could continue to provide critical services to their participants in times of stress. It also discusses various scenarios that call for the use of recovery tools, and lists a series of specific recovery tools that could deal with FMIs financial stresses. The report is in line with the FSB’s Key Attributes of Effective Resolution Regimes for Financial Institutions, which was reissued concurrently with the report.

The CPMI and IOSCO report is available at:

<http://www.bis.org/cpmi/publ/d121.pdf> and the FSB’s Key Attributes of Effective Resolution Regimes for Financial Institutions is available at: [http://www.financialstabilityboard.org/publications/r\\_141015.pdf](http://www.financialstabilityboard.org/publications/r_141015.pdf).

#### **FSB Consults on guidance on Cooperation and Information Sharing with Non-CMG Host Authorities**

On October 17, 2014, the FSB published a consultation paper on guidance on cooperation and information sharing with host authorities of jurisdictions that are not represented on crisis management groups (“CMGs”), where a globally systemically important financial institution (“G-SIFI”) has a systemic presence. The FSB’s Key Attributes of Effective Resolution Regimes for Financial Institutions calls for home and key-host authorities of FSB-designated G-SIFIs to establish CMGs and to develop effective cross-border resolution plans. CMG membership however is limited to key authorities from jurisdictions that are home or host to entities that are material to the effective resolution of the group. This means that CMG representation is sometimes absent i.e., in cases where the operations of a firm are locally systemic to the host jurisdiction but are not material to the resolution of the group. The consultation covers (i) the process for identifying non CMG host jurisdictions; (ii) criteria for assessing the systemic nature of a G-SIFI’s presence in a non-CMG host jurisdiction; (iii) co-operation and information sharing arrangements with a non-CMG host jurisdiction; and (iv) classes of information to be shared between home authorities and non-CMG host jurisdictions.

The consultation closes on December 1, 2014.

The consultation is available at:

[http://www.financialstabilityboard.org/publications/c\\_141017.pdf](http://www.financialstabilityboard.org/publications/c_141017.pdf).

## Consumer Protection

### CFPB Issues Final Rule on Privacy Disclosures

On October 20, 2014, the Consumer Financial Protection Bureau (“CFPB”) announced a final rule to allow companies that limit their consumer data-sharing and meet other requirements to post annual privacy notices online instead of distributing individual paper copies annually. The new rule applies to both banks and non-banks within the CFPB’s jurisdiction as outlined in the Gramm-Leach-Bliley Act. Under the new rule, institutions that meet certain conditions will be allowed to include the notices on regular consumer communication, such as a monthly billing statement for a credit card, alerting customers that the annual privacy notice is available online and in paper by request at a provided telephone number. Institutions that choose to rely on this new method of delivering privacy notices will be required to use the model disclosure form developed by federal regulatory agencies in 2009.

The CFPB final rule is available at:

[http://www.consumerfinance.gov/f/201410\\_cfpb\\_final-rule\\_annual-privacy-notice.pdf](http://www.consumerfinance.gov/f/201410_cfpb_final-rule_annual-privacy-notice.pdf).

## People

### SEC Names New Deputy Director of National Exam Program

On October 20, 2014, the SEC announced that Mark Wyatt was named Deputy Director of the SEC’s National Exam Program.

### OCC Names Tom Tofte Senior National Bank Examiner

On October 16, 2014, the Office of the Comptroller of the Currency announced that it had designated Tom Tofte a Senior National Bank Examiner.

### CFTC Announces Departure of Clearing and Risk Division Director

On October 15, 2014, the CFTC announced that Division of Clearing and Risk Director Ananda Radhakrishnan will depart the agency in November. Phyllis Dietz, currently Deputy Director for Clearing Policy, will be the Acting Director upon Mr. Radhakrishnan’s departure.

## Events

October 26, 2014: ECB to release the results of stress tests of 130 banks in the euro area.

November 3, 2014: European Parliament open hearing on the robustness, validity and significance of the ECB’s asset quality review and stress test exercise.

November 10, 2014: EBA open hearing on the interpretation of different circumstances in which a firm will be considered as failing or likely to fail.

December 2, 2014: EBA open hearing on simple, standard and transparent securitizations.

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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