



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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Corporate Governance

US Federal Deposit Insurance Corporation Publishes Issue of Journal with Focus on the Critical Role of Corporate Governance and Strategic Planning in Responding to Earnings Challenges

On August 24, 2015, the US Federal Deposit Insurance Corporation released the Summer 2015 issue of Supervisory Insights. The current issue includes papers on strategic planning and corporate governance. The journal also includes an article titled “Bank Investment in Securitizations: The New Regulatory Landscape in Brief” which explains how banks can structure their investment decision process in order to comply with these new rules resulting from the enactment of the Dodd-Frank Act.

The FDIC press release is available at: <https://www.fdic.gov/news/news/press/2015/pr15067.html>.

The latest issue of Supervisory Insights is available at:

<https://www.fdic.gov/regulations/examinations/supervisory/insights/sisum15/SISummer2015.pdf>.

Financial Services Roundtable Sends Letter to Governor Tarullo Urging Significant Changes to IAIS Insurer Proposal

On August 24, 2015, the Financial Services Roundtable – a prominent US financial services industry group – released a letter to US Federal Reserve Board governor Daniel Tarullo pressing the Board, in its capacity as a member of the Financial Stability Board and the IAIS, to oppose a plan by the International Association of Insurance Supervisors to create capital standards for systemically important insurance companies before the end of 2015. Among other things, the FSR letter notes that the IAIS plan to adopt Higher Loss Absorbency standards for certain insurance companies is premature, lacks transparency and should be delayed until revisions to other portions of IAIS’s rules are completed. In addition, the letter notes that, just as international banking regulators conducted an economic analysis on the effect of new capital rules for banks prior to the implementation of such rules, so the IAIS should delay adopting a final HLA standard until it completes a comprehensive economic analysis on the effect of placing a capital surcharge on “globally significant” insurance companies.

The press release is available at: <http://fsroundtable.org/fsr-sends-letter-to-gov-tarullo-urging-significant-changes-to-flawed-insurer-proposal/>.

The text of the FSR letter is available at: <http://bit.ly/1U9h7bO>.

Derivatives

US Commodity Futures Trading Commission Approves National Futures Association Rules Enhancing Protections for Retail Forex Customers

On August 27, 2015, the US Commodity Futures Trading Commission approved rule amendments and a new interpretive notice filed by the National Futures Association heightening protections for retail customers of NFA Forex Dealer Members. Among other things, the rule amendments (i) impose additional capital requirements on FDMs; (ii) require FDMs to collect security deposits for off-exchange foreign currency transactions from both eligible contract participant counterparties as well as retail counterparties; (iii) require FDMs to adopt and implement more stringent risk management programs; and (iv) require FDMs to provide additional market disclosures and firm-specific information on their websites.

Statements issued by Chairman Timothy Massad and Commissioner Sharon Bowen emphasized the heightened risks faced by retail customers investing in the foreign exchange markets, including the losses retail investors face as a result of minor price movements in the foreign exchange market. In her statement, Commissioner Bowen further stated that the CFTC should consider imposing additional regulations on retail forex dealers, including, but not limited to: (i) imposing concentration charges on RFEDs if they are overly exposed to a particular currency pair or liquidity provider to incentivize RFEDs to balance their, and their retail counterparties’ positions; (ii) requiring that RFEDs get the best possible prices for their retail counterparties; and (iii) requiring or incentivizing RFEDs to clear in order to lower the credit risks that retail foreign exchange investors face.

The CFTC press release is available at: <http://www.cftc.gov/PressRoom/PressReleases/pr7219-15>.

The NFA’s rule submission to the CFTC is available at:

<http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/nfaforexsubmission052815.pdf>.

The text of Commissioner Bowen's statement on enhancing protections for retail forex customers is available at:

<http://www.cftc.gov/PressRoom/SpeechesTestimony/bowenstatement082715>.

The text of Chairman Massad's statement on enhancing protections for retail forex customers is available at:

<http://www.cftc.gov/PressRoom/SpeechesTestimony/massadstatement082715>.

European Securities and Markets Authority Seeks Feedback on CCP Time Horizon for Liquidation Period

On August 27, 2015, the European Securities and Markets Authority published a discussion paper on a review of the Regulatory Technical Standards for CCPs on the time horizons for the liquidation period for margin held by CCPs. The RTS currently specify a two-day time horizon as the liquidation period which should be sufficient for a CCP to transfer or liquidate the positions of a defaulting clearing member for exchange-traded derivatives. Margins are modeled to cover the exposures arising from this time horizon. The original RTS use this two-day liquidation period but based on net margin models, where offsetting positions of different customers cancel one another out. A key economic difference has been noted between the US and EU regimes for CCP margins, in that the US only requires a one day liquidation period but is calculated on a gross basis across all customer positions. A degree of harmonization of the two regimes is proposed to assist the EU in adopting a long-awaited equivalence decision for US CCPs under EMIR, with proposed adoption of a "one day gross" model for European CCP customer accounts. The two-day standard for clearing members' house accounts and the five-day liquidation period for OTC products would be retained. Responses to the discussion paper are due by September 30, 2015. On the basis of feedback, ESMA may prepare revised draft RTS for public consultation.

ESMA's discussion paper and the response form are available at: <http://www.esma.europa.eu/consultation/Consultation-Review-EMIR-Article-26-RTS-1532013>.

European System of Central Banks Reports on Review of European Market Infrastructure Regulation for Access of CCPs to Central Bank Liquidity Facilities

On August 25, 2015, the European Central Bank published a report of the European System of Central Banks, which is comprised of the ECB and the national central banks of all EU Member States, on whether a measure should be included in the European Market Infrastructure Regulation which would facilitate the access of CCPs to central bank liquidity facilities. The report is required as part of the European Commission's Review of EMIR. Under EMIR, there are no requirements for the provision of central bank liquidity facilities to CCPs. The decision whether to offer such facilities is left to each central bank's discretion. This framework is in line with the Treaty on the Functioning of the European Union and the Statute of the ESCB. The ESCB does not consider that introducing requirements in EMIR for CCP access to central bank facilities is appropriate to address any potential weaknesses and concludes that the current legal framework is sufficient to ensure access for CCPs to liquidity facilities offered by central banks.

The ESCB report is available at: <http://www.ecb.europa.eu/pub/pdf/other/genc-2015-escb-reporten.pdf?a9e9416bb391b8515616e4fb78570479>.

Financial Services

UK Regulators Launch New Websites for Revised Handbook and Rules

On August 29, 2015, the Financial Conduct Authority launched a new website for its Handbook of rules and guidance, and on September 1, 2015, the Prudential Regulation Authority launched its new website for the new PRA Rulebook.

The new FCA and PRA websites are available at: <https://www.handbook.fca.org.uk> and <http://www.prarulebook.co.uk>.

The FCA and PRA announcements are available at: <http://www.fca.org.uk/news/fca-handbook-website-launch> and <http://www.bankofengland.co.uk/prar/Pages/policy/handbook.aspx>.

Securities

European Securities and Markets Authority Publishes Examples of Waivers for Pre-Trade Transparency Requirements under MiFID I

On August 26, 2015, ESMA published a document setting out examples of waivers for pre-trade transparency requirements under the current Markets in Financial Instruments Directive and its implementing legislation, known as MiFID I. The document includes positions adopted by ESMA's predecessor, the Committee of European Securities Regulators as well as opinions issued by ESMA. The document is intended to assist national regulators in ensuring that their supervisory practices are in line with ESMA's opinions and to assist firms in determining the extent of the MiFID I requirements. Under MiFID I, operators of regulated markets and multilateral trading facilities must publish current bid and offer prices and the depth of trading interests in shares admitted to trading on a regulated market unless an exemption applies. Exemptions are available from national regulators for shares based on the market model or the type and size of orders. ESMA intends to update the document on an ongoing basis.

ESMA's document is available at: <http://www.esma.europa.eu/content/MiFID-waivers-pre-trade-transparency-CESR-positions-and-ESMA-opinions>.

Upcoming Events

September 4, 2015: European Banking Authority 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).

Upcoming Consultation Deadlines

September 7, 2015: FCA Call for Input on Innovation in Digital and Mobile Solutions in Financial Services

September 7, 2015: FCA Consultation on Extending the Certification Regime to Wholesale Market Activities

September 11, 2015: Basel Committee Consultation on Interest Rate Risk in the Banking Book

September 11, 2015: UK Government Consultation on Reforms to UK Regulatory Architecture

September 14, 2015: PRA Consultation on Corporate and Board Governance

September 14, 2015: CFTC Proposed Rule on Cross-border Margin

September 23, 2015: International Organization of Securities Commissions Consultation on International Regulatory Standards on Fees and Expenses on Investment Funds

September 23, 2015: Payment Systems Regulator Survey on Payment Service Providers and Indirect Payment Systems

September 24, 2015: Federal Reserve Board Proposed Rule to Modify Capital Planning and Stress Testing Regulations

September 25, 2015: FCA Discussion Paper on Delivering Smarter Communications to Consumers

September 28, 2015: US Federal Financial Institutions Examination Council Proposals on Reporting for Foreign Branches of US Banks and Savings Associations

September 30, 2015: Joint PRA and FCA Consultation on New Rules for Regulating Credit Unions

September 30, 2015: Input Sought for Development of a Global Unique Transaction Identifier

October 19, 2015: Federal Reserve Board Proposed Revisions to Systemic Risk Reporting by Large Bank Holding Companies.

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:

Contacts



BARNEY REYNOLDS
T: +44 20 7655 5528
barney_reynolds@shearman.com
London



REENA AGRAWAL SAHNI
T: +1 212 848 7324
reena.sahni@shearman.com
New York



RUSSELL D. SACKS
T: +1 212 848 7585
rsacks@shearman.com
New York



THOMAS DONEGAN
T: +44 20 7655 5566
thomas.donegan@shearman.com
London



DONNA M. PARISI
T: +1 212 848 7367
dparisi@shearman.com
New York



NATHAN J. GREENE
T: +1 212 848 4668
ngreene@shearman.com
New York



GEOFFREY B. GOLDMAN
T: +1 212 848 4867
geoffrey.goldman@shearman.com
New York



JOHN ADAMS
T: +44 20 7655 5740
john.adams@shearman.com
London

AATIF AHMAD
T: +44 20 7655 5120
aatif.ahmad@shearman.com
London

AZAD ALI
T: +44 20 7655 5659
azad.ali@shearman.com
London

CHRISTINA BROCH
T: +1 202 508 8028
christina.broch@shearman.com
Washington, DC

MARTYNA BUDZYNSKA
T: +44 20 7655 5816
martyna.budzynska@shearman.com
London

TIMOTHY J. BYRNE
T: +1 212 848 7476
tim.byrne@shearman.com
New York

JAMES CAMPBELL
T: +44 20 7655 5570
james.campbell@shearman.com
London

AYSURIA CHANG
T: +44 20 7655 5792
aysuria.chang@shearman.com
London

TOBIA CROFF
T: +39 02 0064 1509
tobia.croff@shearman.com
Milan

ANNA DOYLE
T: +44 20 7655 5978
anna.doyle@shearman.com
London

SYLVIA FAVRETTO
T: +1 202 508 8176
sylvia.favretto@shearman.com
Washington, DC

MAK JUDGE
T: +65 6230 8901
mak.judge@shearman.com
Singapore

DONALD N. LAMSON
T: +1 202 508 8130
donald.lamson@shearman.com
Washington, DC

HERVÉ LETRÉGUILLY
T: +33 1 53 89 71 30
hletreguilly@shearman.com
Paris

OLIVER LINCH
T: +44 20 7655 5715
oliver.linch@shearman.com
London

BEN MCMURDO
T: +44 207 655 5906
ben.mcmurdo@shearman.com
London

JENNIFER D. MORTON
T: +1 212 848 5187
jennifer.morton@shearman.com
New York

BILL MURDIE
T: +44 20 7655 5149
bill.murdie@shearman.com
London

BRADLEY K. SABEL
T: +1 212 848 8410
bsabel@shearman.com
New York

JENNIFER SCOTT
T: +1 212 848 4573
jennifer.scott@shearman.com
New York

KOLJA STEHL
T: +49 69 9711 1623
kolja.stehl@shearman.com
Frankfurt / London

ELLERINA TEO
T: +44 20 7655 5070
ellerina.teo@shearman.com
London

ABU DHABI | BEIJING | BRUSSELS | FRANKFURT | HONG KONG | LONDON | MENLO PARK | MILAN | NEW YORK | PARIS
ROME | SAN FRANCISCO | SÃO PAULO | SAUDI ARABIA* | SHANGHAI | SINGAPORE | TOKYO | TORONTO | WASHINGTON, DC

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