

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 Staff Issues Rule Interpretation Concerning Deposit of Customer Funds with UK Depositories

On August 28, 2014, the US Commodity Futures Trading Commission's ("CFTC") Division of Swap Dealer and Intermediary Oversight ("Division") issued an interpretation of CFTC Regulation 30.7(c) under the Commodity Exchange Act allowing futures commission merchants ("FCMs") to deposit customer funds used to margin foreign futures positions with UK-licensed investment firms that hold such funds under the UK Financial Conduct Authority's ("FCA") client money rules or as bank deposits subject to the UK Prudential Regulation Authority's ("PRA") rules.

Under CFTC Regulation 30.7(c), an FCM is required to deposit customer funds under the laws and regulations of a foreign jurisdiction that provides the greatest degree of protection to such funds. In addition, the regulation provides that an FCM may not waive any of the protections afforded to customer funds under the laws of the foreign jurisdiction. The Division's interpretation addresses requests received from FCMs confirming that an FCM does not waive protections provided to customer funds if it chooses to deposit customer funds with UK regulated banks.

The CFTC staff letter is available here:

<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-110.pdf>.

Bank Prudential Regulation & Regulatory Capital

Final ITS on Right of Establishment and Freedom to Provide Services Published

On August 28, 2014, the text of the EU Regulation laying down implementing technical standards ("ITS") with regard to standard forms, templates and procedures for notifications relating to the exercise of the right of establishment

and the freedom to provide services under the Capital Requirements Directive (“CRD”) was published in the Official Journal of the European Union. The ITS include: (i) the definitions specifying the distinctions between the different types of notifications; (ii) the requirements and procedures to be followed for such notifications; and (iii) the standard forms and templates to be used. The ITS will enter into force on September 17, 2014.

The ITS are available here: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_254_R_0002&from=EN.

Credit Ratings

SEC Adopts Credit Rating Agency Reform Rules

On August 27, 2014, the US Securities and Exchange Commission (“SEC”) adopted new requirements for credit rating agencies to enhance governance, protect against conflicts of interest, and increase transparency to enhance the quality of credit ratings and increase credit rating agency accountability. The new rules and amendments adopted by the SEC implement certain rulemaking requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) with respect to nationally recognized statistical rating organizations (“NRSROs”). The new requirements provide for an annual certification by CEOs as to the effectiveness of internal controls and other certifications accompanying credit ratings to attest that the rating was not influenced by other business activities.

While certain amendments will become effective 60 days after publication in the Federal Register, the amendments with respect to the annual report on internal controls and the production and disclosure of performance statistics will be effective on January 1, 2015. Certain other provisions are effective nine months after publication in the Federal Register, including: prohibiting the sales and marketing conflict; addressing look-back reviews to determine whether the credit analyst’s prospects of future employment influenced a credit rating; specifying the disclosure of rating histories; addressing rating methodologies; requiring the form and certification to accompany credit ratings; addressing issuer and underwriter disclosure of third-party due diligence findings; addressing the certification of a third-party due diligence provider; addressing NRSRO standards of training, experience, and competence; and addressing universal rating symbols.

The final SEC rule is available at: <http://www.sec.gov/rules/final/2014/34-72936.pdf>.

Financial Services

Guidelines for Handling Complaints in the EU Banking and Securities Sectors

On August 25, 2014, the European Banking Authority and the European Securities and Markets Authority published translations of their Joint Committee

final Report on guidelines for handling consumer complaints in the securities and banking sectors. The guidelines, which apply to national regulators responsible for supervising complaints handling by firms, will come into force on October 25, 2014.

The final report and translations are available at:

<http://www.esma.europa.eu/content/Joint-Committee-Final-Report-guidelines-complaints-handling-securities-ESMA-and-banking-EBA->.

FCA Publishes Approach to Using Attestations

On August 26, 2014, the FCA published a letter dated August 22, 2014 to the FCA Practitioner Panel setting out the FCA's approach to using attestations as a formal supervisory tool. The FCA Practitioner Panel had expressed its concern to the FCA that without further clarity about the FCA's approach to attestations, the increasing use by the FCA of the tool might skew prioritization of risk at firms. The FCA letter states that the most usual scenarios in which attestations may be used are:

- a. notification to the FCA where, in cases of emerging risk which are not likely to result in consumer harm or negatively impact market integrity, the nature, extent or magnitude of the risk changes, including assurance from the firm that it will monitor the risk;
- b. undertaking that a firm will take specific action within a specific timescale;
- c. self-certification that the risk has been resolved; or
- d. verification that a risk has been resolved or mitigated, including, for example, by internal audit.

The FCA intends to issue revised internal guidance and supporting materials, emphasizing the importance of clarity and transparency when using attestations to its supervisory personnel.

The FCA letter is available here:

<http://www.fca.org.uk/static/documents/attestations-clive-adamson.pdf>.

SEC Adopts Asset-Backed Securities Reform Rules

On August 27, 2014, the SEC adopted revisions to rules governing the disclosure, reporting, and offering process for asset-backed securities ("ABS"). The revisions are intended to enhance transparency, better protect investors, and facilitate capital formation in the securitization market. Among other things, the new rules require loan-level disclosure for certain assets, such as residential and commercial mortgages and automobile loans, and provide more time for investors to review a securitization offering, revise the eligibility criteria for using an expedited offering process known as "shelf offerings," and make revisions to reporting requirements.

The revised rules become effective 60 days after publication in the Federal Register and issuers must comply no later than one year after the rules are published in the Federal Register. Offerings of ABS backed by residential and

commercial mortgages, auto loans, auto leases, and debt securities (including resecuritizations) must comply with the asset-level disclosure requirements no later than two years after the rules are published in the Federal Register.

The draft final rule is available here: <http://www.sec.gov/nb/reg-ab-adopting-release-draft.pdf>.

Shadow Banking

Shadow Banking Monitoring Exercise to be Developed for Americas

On August 22, 2014, the Regional Consultative Group for the Americas (“RCGA”) of the Financial Stability Board (“FSB”) published a report on shadow banking. The purpose of the report was to design a shadow banking monitoring exercise for jurisdictions in the RCGA to ensure comparability, provide a “macro-mapping” monitoring component, combined with jurisdiction-specific analysis of the nature of shadow banking, its connections to the rest of the financial sector, and especially to the traditional banking sector, and potential risks from these connections (including case studies), and to propose recommendations and identify future challenges to improve the oversight of the shadow banking sector in the region. Among the key findings for the macro-mapping exercise, the report notes that the exercise: (i) resulted in the collection of valuable data on non-bank credit intermediation in the Americas; (ii) provides useful vehicle for disseminating the FSB’s methodology to non-FSB members; (iii) is a first step towards identifying the role of international financial centers (“IFCs”) in global non-bank credit intermediation; and (iv) identified four types of shadow banking entities in the region that may merit further attention because of the potential risk their activities pose to financial stability in specific jurisdictions. Such entities are open-ended investment funds that hold illiquid assets, large and highly leveraged broker dealers, non-bank deposit-taking institutions, and finance companies. The report recommends conducting the shadow banking monitoring exercise on an annual basis in the RCGA, focusing in particular on the four entities identified above, as well as broader monitoring efforts by jurisdictions engaged in significant IFC activities.

The full FSB report is available at:

http://www.financialstabilityboard.org/publications/r_140822b.pdf.

Funds

UCITS V Published

The text of the UCITS V Directive, which amends the Undertakings for Collective Investment in Transferable Securities (“UCITS”) Directive, was published in the Official Journal on August 28, 2014. UCITS V will harmonize the approach to depositaries’ liabilities (which, under the previous UCITS Directive, varied between member states) by introducing a uniform set of oversight duties which apply regardless of the legal form the UCITS takes. The provisions relating to

depositories are intended to bring the UCITS regime in line with the Alternative Investment Fund Managers Directive, which already imposes similar depository-related requirements in relation to alternative investment funds. Under UCITS V, a depository will have more onerous obligations for custody, including segregation of assets. The new Directive makes it clear that each UCITS may only appoint a single depository and includes administrative sanctions for any infringement, allowing member states to impose administrative and criminal sanctions for the same infringements.

The Directive also adds the express obligation for UCITS managers to establish and maintain remuneration policies which encourage sound and effective risk management for staff “whose professional activities have a material impact on the risk profiles of the UCITS they manage.” These policies should also apply (in a proportionate manner) to any third parties to which the UCITS has delegated investment decisions which influence the fund's risk profile.

UCITS V will come into force on September 17, 2014. Member States have until March 18, 2016 to transpose the new requirements into national law.

The text of UCITS V is available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.257.01.0186.01.ENG.

Financial Market Infrastructure

CSD Regulation Published

On August 28, 2014, the EU regulation on improving securities settlement in the EU and on central securities depositories was published in the Official Journal of the European Union (the “CSD Regulation”). The CSD Regulation comes into force on September 17, 2014 and will apply directly across the EU. The CSD Regulation will apply from January 1, 2023 to transferable securities issued after that date and from January 1, 2015 to all transferable securities. Certain provisions will only apply from the date of entry into force of the relevant delegated act adopted by the Commission under the CSD Regulation.

The CSD Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.257.01.0001.01.ENG.

CPSS Renamed as CPMI

The Committee on Payment and Settlement Systems has been renamed as the Committee on Payments and Market Infrastructures (“CPMI”). The change, which is accompanied by a new mandate and charter, is made to reflect the actual activities of the Committee, whose role has expanded as the financial markets have developed.

The announcement is available at: <http://www.bis.org/press/p140901.htm>.

Enforcement

FCA Fines Deutsche Bank for Transaction Reporting Failures

On August 28, 2014, the FCA published its final notice fining Deutsche Bank for incorrectly reporting equity swap CFD transactions between 2007 and 2013. The bank was fined £4,718,800. Accurate transaction reporting is important for the FCA to properly monitor and detect suspected market abuse, insider trading and market manipulation.

The final notice is available at: <http://www.fca.org.uk/static/documents/final-notices/deutsche-bank-ag.pdf>.

People

CFPB Announces New Senior Leaders

On August 28, 2014, the US Consumer Financial Protection Bureau (“CFPB”) announced several new leaders. Patricia McClung joins the CFPB as Assistant Director for Mortgage Markets, Janneke Ratcliffe as Assistant Director for Financial Education, and Will Wade-Gery as the Assistant Director for Card and Payments Markets.

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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