SHEARMAN & STERLING LLP

FINANCIAL INSTITUTIONS ADVISORY & FINANCIAL REGULATORY GROUP WEEKLY NEWSLETTER

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.

We are pleased to announce our new Financial Regulatory Developments Focus <u>website</u>, which collates information on global financial regulatory developments of interest. To enable you to quickly retrieve the information you need, the content can be organized by topic or month. You may also <u>subscribe</u> to our RSS feed to receive timely updates as they are added to the website. The newsletters will continue to be distributed once a week. However, new content will be added to the website twice a week, making it a more current source of information.

The quarterly European Governance & Securities Law Focus newsletter is available here.

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Bank Prudential Regulation & Regulatory Capital

US Board of Governors of the Federal Reserve System Announces Approval of Applications by Royal Bank of Canada and RBC USA Holdco Corporation

On October 7, 2015, the US Board of Governors of the Federal Reserve System announced the approval of the applications by Royal Bank of Canada and its subsidiary, RBC USA Holdco Corporation, to acquire City National Corporation and its wholly owned subsidiary, City National Bank, under section 3 of the Bank Holding Company Act. City National is a \$33 billion banking organization. The Federal Reserve Board's approval comes approximately seven months after submission of the application, which was the subject of comments opposing the application.

On the same day, the Federal Reserve Board approved the application by Royal Bank of Canada to establish a limited federal branch in New Jersey. As a limited federal branch, it will only take deposits permitted to be taken by an Edge corporation under section 25A of the Federal Reserve Act.

The Federal Reserve Board press release announcing the approval of the acquisition is available at: <u>http://www.federalreserve.gov/newsevents/press/orders/20151007a.htm</u>; the Federal Reserve Board order approving the acquisition is available at: <u>http://www.federalreserve.gov/newsevents/press/orders/orders20151007a1.pdf</u>; the Federal Reserve Board press release approving the limited branch is available at:

<u>http://www.federalreserve.gov/newsevents/press/orders/20151007b.htm</u> and the Federal Reserve Board order approving the limited branch is available at: <u>http://www.federalreserve.gov/newsevents/press/orders/0151007b1.pdf</u>.

EU Regulation Correcting Regulatory Technical Standards on Securitization Retention Under Capital Requirements Regulation

On October 8, 2015, a Delegated Regulation correcting the text of the Regulatory Technical Standards on requirements for investor, sponsor, original lenders and originator institutions for exposures to transferred credit risk under the Capital Requirements Regulation was published in the Official Journal of the European Union. Minor errors were made in the RTS published in various languages of the EU, and the revisions correct such errors, including clarifying that materially relevant data does not have to be provided to investors at an individual loan level in all circumstances and that it may be sufficient to provide such data on an aggregate basis in certain circumstances. The Delegated Regulation enters into force on October 28, 2015.

The Deleted Regulation is available at: <u>http://eur-lex.europa.eu/legal-</u> content/EN/TXT/?uri=uriserv:OJ.L .2015.263.01.0012.01.ENG.

European Banking Authority Publishes Guidelines on Management of Interest Rate Risk Arising from Non-Trading Activities On October 6, 2015, the European Banking Authority published final translations of its Guidelines on the management of interest rate risk arising from non-trading activities, also known as interest rate risk in the banking book or IRRBB, which is the risk to firms arising from adverse movements in interest rates. Under the Capital Requirements Directive, national regulators must require a firm to take measures if its economic value declines by more than 20 percent of their own funds as a result of a sudden and unexpected change in interest rates of 200 basis points which is termed supervisory "standard shock." National regulators must also take steps when a change occurs, as defined by the EBA in these Guidelines. The Guidelines set out the definition of such change and the methods for the calculation of the outcome of the supervisory standard shock, which is the shock applied to a firm's portfolio to determine the impact on the economic value of the firm, as well as specify the identification, management and mitigation of IRRBB. The Guidelines apply from January 1, 2016. They will repeal the Guidelines of the Committee of European Banking Supervisors published in 2006. The Guidelines are addressed to national regulators and relevant credit institutions and investment firms. National regulators must notify the EBA by December 7, 2015 as to whether they comply or intend to comply with the Guidelines. The Guidelines are available at: <u>http://www.eba.europa.eu/documents/10180/1084098/EBA-GL-2015-08_EN_GL+on+IRRBB.pdf/1a14372b-f165-4163-a91a-22770d1d938a</u>.

Nine EU Banks Subject to Comprehensive Assessment by the European Central Bank, Banking Supervision in 2015

On October 9, 2015, the Banking Supervision division of the European Central Bank announced that it was undertaking a comprehensive assessment of nine EU banks in 2015. The banks are Banque Degroof S.A., Agence Française de Développement, J.P. Morgan Bank Luxembourg S.A., Mediterranean Bank plc, Sberbank Europe AG, VTB Bank (Austria) AG, Novo Banco, SA, Unicredit Banka Slovenija d.d. and Kuntarahoitus Oyj (Municipality Finance plc). The group consists of five banks that are already under direct supervision by the ECB and four banks that may become subject to ECB supervision in January 2016. The comprehensive assessment consists of an asset quality review and a stress test. Novo Banco will only be subject to the stress test part of the assessment. Results of the comprehensive assessment will be published in November 2015.

The ECB decision is available at:

https://www.bankingsupervision.europa.eu/ecb/legal/pdf/en_ecb_2015_21_f_sign_.pdf.

Financial Stability Board Chair's Letter to G20 on Financial Reforms

On October 5, 2015, the chair of the Financial Stability Board, Mark Carney, wrote a letter to the G20 Financial Ministers and Central Bank Governors on the FSB's progress on the financial reforms program. The letter includes information on the FSB's continuing work to finalize post-crisis reforms and states that the FSB will soon deliver its first annual consolidated report on the implementation of financial reforms, which informs, amongst other things, that all 24 FSB member jurisdictions have implemented Basel III capital rules and that liquidity rules in almost all those jurisdictions are also in force. The FSB acknowledges that much work remains to be carried out at national level to implement effective resolution regimes, though international policy measures to end too-big-to-fail are now largely complete for banks. OTC derivatives reforms and their implementation are behind schedule but nevertheless underway and the FSB aims to publish a peer review report that will identify where blockages need to be removed for the reporting, sharing and aggregation of key information for trades. Policies on money market funds and incentive alignment approaches for securitization in relation to the shadow banking system are progressing, though the FSB considers that significant steps must still be taken to transform shadow banking into a resilient market-based finance.

The letter is available at: <u>http://www.financialstabilityboard.org/wp-content/uploads/FSB-Chairs-letter-to-G20-Mins-and-Govs-5-October-2015.pdf</u>.

Conduct & Culture

UK Regulators Consult on Proposals for Regulatory References

On October 6, 2015, the Prudential Regulation Authority and Financial Conduct Authority jointly published a consultation paper on proposals for regulatory references that are employment references passed between firms when an individual moves roles. The proposals form part of the wider reforms aiming to strengthen accountability in the banking and insurance sectors and are relevant to candidates applying for new roles, including senior management functions under the Senior Managers Regime, significant harm functions under the Certification Regime and other roles within insurance firms and credit unions. The proposals include: (i) a requirement for firms to request regulatory references covering a period of six years from former employers; (ii) specific disclosures for inclusion in regulatory references, such as whether the firm has ever concluded that a candidate was at any point in the last six years deemed not fit and proper to perform a function, the details and basis of any disciplinary action taken and details of any other roles performed by a candidate within a firm whilst working as an employee of that firm; and (iii) a requirement for firms not to enter into any arrangements that would prevent them from disclosing relevant information. Final rules are expected to

be in place for the start of the accountability regime on March 7, 2016. Comments on the consultation are due by December 7, 2015.

The consultation is available at: http://www.bankofengland.co.uk/pra/Documents/publications/cp/2015/cp3615.pdf.

Consumer Protection

US Board of Governors of the Federal Reserve System Issues Revised Interagency Examination Procedures for Regulation P

On October 5, 2015, the US Federal Financial Institutions Examination Council's Task Force on Consumer Compliance revised interagency examination procedures for Regulation P, which governs the privacy of consumer financial information. Under Regulation P, financial institutions are prohibited from disclosing nonpublic personal information about consumers to unaffiliated third parties, with certain exceptions if the institution meets various opt-out and notice requirements. Regulation P also requires financial institutions to inform customers of their privacy policies and practices.

Among other things, the revised examination procedures reflect a rulemaking by the US Consumer Financial Protection Bureau from October 2014 that creates an alternate delivery method financial institutions can use in their annual disclosure of privacy practices to customers. The examination procedures also reflect the recodification of Regulation P by the CFPB in December 2011.

The revised examination procedures supersede previous Regulation P interagency examination procedures issued by the FFIEC via CA 11-4.

The Federal Reserve Board press release is available at:

http://www.federalreserve.gov/bankinforeg/caletters/caltr1507.htm and the revised interagency examination procedures are available at: http://www.federalreserve.gov/bankinforeg/caletters/CA_15-7_Letter_Regulation_P_Privacy_Examination_Procedures.pdf.

Corporate Governance

UK Regulators Finalize Whistleblowing Rules

On October 6, 2015, the PRA and FCA published Policy Statements and final rules on whistleblowing. The rules require firms to implement internal whistleblowing procedures, to inform employees of the internal procedures and the whistleblowing services provided by the PRA and FCA and to ensure that employment contracts and settlement agreements do not deter employees from whistleblowing. The rules will apply to UK banks, building societies and credit unions with assets of £250 million or greater, PRA-designated investment firms, insurance and reinsurance firms within the scope of Solvency II and the Society of Lloyd's and managing agents. UK branches of overseas firms are not in scope but the regulators will consider this further once the effectiveness of these new rules can be properly assessed. The scope of the new rules therefore captures those UK firms that fall within the Senior Manager and Certification Regimes which come into effect on March 7, 2016. Firms will have until September 7, 2016 to implement the new whistleblowing rules. However, firms will have to assign a senior manager who is a non-executive director as the whistleblowers' champion by March 7, 2016 and that individual will be responsible for overseeing the firm's implementation of the new whistleblowing rules.

The PRA Policy Statement is available at:

<u>http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2415.pdf</u> and the FCA Policy Statement is available at: <u>http://www.fca.org.uk/static/fca/article-type/policy%20statement/ps-15-24.pdf</u>.

Cyber Security

Expansion of the US Board of Governors of the Federal Reserve System's Emergency Communications System

On October 13, 2015, the Federal Reserve Board issued SR Letter 15-10/CA 15-8 to announce the expansion of its Emergency Communications System – a service that maintains a database of emergency contacts to allow the Federal Reserve System staff to communicate with financial institutions in case of a natural disaster or operational emergency. The expansion will require supervised institutions to identify and register "designated cyber emergency contact(s)" that Federal Reserve staff may contact in the case of cyber emergencies. The Federal Reserve will periodically test the system to verify the contact's business telephone number and e-mail address and the confirmation of delivery of test messages.

The Federal Reserve Board press release is available at:

<u>http://www.federalreserve.gov/bankinforeg/srletters/SR1510.htm</u> and the SR Letter 15-10/CA 15-8 is available at: <u>http://www.federalreserve.gov/bankinforeg/srletters/sr1510.pdf</u>.

Derivatives

European Securities and Markets Authority Publishes Final Draft Technical Standards on the Clearing Obligation for CDS On October 2, 2015, the European Securities and Markets Authority published its final report and final draft RTS on the clearing obligation for certain classes of credit derivatives. Under the European Market Infrastructure Regulation, ESMA is required to develop draft RTS setting out the OTC derivatives that should be subject to the clearing obligation, the date/s from which the obligation should apply and the minimum remaining maturity of OTC derivatives. The final draft RTS provide for the following two iTraxx Index CDS to be subject to the clearing obligation: (i) untranched iTraxx Index CDS (Main, EUR,5Y); and (ii) untranched iTraxx Index CDS (Crossover, EUR,5Y). ESMA has, to a large extent, adopted the same approach that it took for the RTS on the clearing obligation for IRS (which the European Commission adopted on August 6, 2015). The final draft RTS on the clearing obligation for CDS provide for the same categories of counterparties to be subject to the CDS clearing obligation as will be subject to the IRS clearing obligation. Similarly, the obligation for the different counterparties will be phased in according to counterparty type. This proposal follows ESMA's recent consultation on potentially amending the RTS for CCPs on the time horizons for the liquidation period for margin held by CCPs. That consultation aims to harmonize EU and US margin requirements in part, an issue which if resolved may mitigate some of the commercial and practical difficulties that have previously prevented finalizing of this clearing RTS. ESMA has submitted the final draft RTS on a clearing obligation for CDS to the European Commission for endorsement.

The final draft RTS on a clearing obligation for CDS is available at: <u>http://www.esma.europa.eu/news/Press-release-ESMA-adds-Index-CDS-central-clearing-obligation?t=326&o=home</u>.

The Shearman & Sterling Client Note "EU Clearing Obligation for Interest Rate Swaps Looms" is available at: <u>http://www.shearman.com/~/media/Files/NewsInsights/Publications/2015/08/EU-Clearing-Obligation-for-Interest-Rate-Swaps-Looms-FIAFR-082415.pdf</u>.

Enforcement

US Securities and Exchange Commission Charges Blackstone with Disclosure Failures

On October 7, 2015, the US Securities and Exchange Commission announced that three private equity fund advisers within The Blackstone Group ("Blackstone") agreed to pay approximately \$39 million to settle charges regarding their failure to inform investors about benefits that the advisers received from accelerated monitoring fees and legal fee discounts. Nearly \$29 million of the \$39 million will be distributed to fund investors impacted by the disclosure failures.

According to the SEC's order, Blackstone breached its fiduciary duty by failing to adequately disclose to fund investors the acceleration of monitoring fees paid by certain portfolio companies owned by its funds prior to the companies' sale/initial public offering. In essence, these fees reduced the value of the companies prior to their sale. The SEC order states Blackstone further violated its fiduciary duty by negotiating a legal fee arrangement for services by an outside law firm that provided greater discounts for itself than the funds, without adequately disclosing such arrangement to fund investors.

Without admitting or denying the findings by the SEC, Blackstone consented to the entry of the SEC order. Blackstone agreed to cease and desist from further violations and to disgorge \$26.2 million of ill-gotten gains as well as prejudgment interest of \$2.6 million. It further agreed to pay a civil penalty of \$10 million.

The SEC press release is available at: <u>http://www.sec.gov/news/pressrelease/2015-235.html</u> and the SEC order is available at: <u>http://www.sec.gov/litigation/admin/2015/ia-4219.pdf</u>.

US Securities and Exchange Commission Charges UBS for Misleading US Investors as a Structured Products Issuer

On October 13, 2015, the SEC announced that UBS AG has agreed to pay \$19.5 million to settle charges that it misled US investors by providing false or misleading statements and omissions in its offering materials regarding certain structured notes linked to a proprietary foreign exchange trading strategy. The SEC investigation found that UBS falsely stated that the investment relied on a "transparent" and "systematic" currency trading strategy and used "market prices" to calculate the securities underlying the index to which the securities were linked, the V10 Currency Index with Volatility Cap. However, the company did not disclose that its employees were engaged in certain hedging trades that could impact the index price, which trades were determined to have depressed the V10 Currency Index price by approximately five percent, resulting in losses to investors. This is the SEC's first case related to misstatements and omissions by an issuer of structured notes.

The SEC press release is available at: <u>http://www.sec.gov/news/pressrelease/2015-238.html</u> and the SEC order is available at: <u>http://www.sec.gov/litigation/admin/2015/33-9961.pdf</u>.

Financial Market Infrastructure

Committee on Payments and Market Infrastructures Consults on Correspondent Banking Reforms

On October 6, 2015, the Committee on Payments and Market Infrastructures published a consultative report on correspondent banking which recommends technical measures to address the risk of fragmentation of cross-border payment networks. The CPMI was tasked with producing a report on the current trends and technical measures which raise concerns and costs issues for banks involved in correspondent banking. Some banks providing correspondent banking services have been reducing the number of relationships they maintain and establishing few new ones. Increasing costs and uncertainty about customer due diligence requirements for anti-money laundering purposes are among the key reasons. The CPMI makes recommendations to address those issues, including: (i) using KYC utilities such as Genpact and Bankers Almanac; (ii) using legal entity identifiers; (iii) that the Financial Action Task Force and other authorities with AML responsibilities provide clarity on the extent that banks need to know their customers' customers, on data privacy concerns and the type of information that information sharing mechanisms could store and distribute; and (iv) that stakeholders consider determining whether the current payment message is efficient and effective. The CPMI recommendations are open for comment until December 7, 2015.

The consultation paper is available at: http://www.bis.org/cpmi/publ/d136.pdf.

Financial Services

European Parliament Adopts Revised Directive on Payment Services

On October 8, 2015, the European Parliament announced that it adopted the revised Directive on Payment Services known as PSD2, which will repeal the current PSD. The aims of PSD2, which focuses on electronic payments and payment services within the EU, include making payments between Member States as secure, easy and efficient as those made within a Member State, regulating new types of payment services and payment services providers which are currently unregulated and stimulating competition in the electronic payments market. The Directive is expected to be formally adopted by the EU Council of Ministers and will then be published in the Official Journal of the European Union. Member States will then have two years to introduce PSD2 into national law.

The press release is available at:

http://www.europarl.europa.eu/pdfs/news/expert/infopress/20151002IPR95307/20151002IPR95307 en.pdf.

UK Legislation Implementing the Transparency Amending Directive

On October 9, 2015, the UK Government published Regulations implementing the Transparency Amending Directive which amends the Transparency Directive, the Transparency Directive Implementing Directive and the Prospectus Directive. The Regulations amend the Financial Services and Markets Act 2000 and include provisions on the new definition of what comprises an instrument to be counted towards the major voting notification thresholds. The new definition aligns itself with the Transparency Amending Directive's harmonized definition whereby holdings of all instruments equivalent to holding equity, rather than just equity itself, count towards the notification thresholds. The provisions also impose an obligation on the FCA to ensure that there is a central storage system for all information required to be disclosed under the Transparency Directive and its related EU legislation and the Market Abuse Directive. The FCA may also apply to court for a suspension of voting rights for shares in the event of breaches of the Transparency Directive requirements to notify changes in major shareholding. The provisions which require the FCA to make or amend its rules will come into force on November 1, 2015. The remainder of the provisions come into effect on November 26, 2015. Both the FCA and HM Treasury consulted in March 2015 on implementing the revised Transparency Directive.

The Regulations are available at: http://www.legislation.gov.uk/uksi/2015/1755/pdfs/uksi 20151755 en.pdf.

UK Government and Regulator Publish Joint Consultations on Financial Advice for Consumers

On October 12, 2015, the FCA and HM Treasury jointly published a call for input seeking views on how to radically improve access to financial advice for consumers. The FCA and HM Treasury also published a joint consultation on public financial guidance, which will consider how the government should structure and provide information that consumers may require to seek advice to make financial decisions. Both consultations form part of the Financial Advice Market Review, announced in August 2015, which is wide in scope and aims to analyze how financial advice could be better provided to consumers, considering the difficulties that consumers may face in seeking such advice. Comments on the call for input and consultation are due by December 22, 2015.

The call for input is available at: <u>http://www.fca.org.uk/static/documents/famr-cfi.pdf</u> and the consultation is available at: <u>https://www.gov.uk/government/consultation-public-financial-guidance</u>.

Securities

US Securities and Exchange Commission Announces New Rulemaking Database

On October 1, 2015, the SEC announced the launch of a new rulemaking database to provide for greater transparency into the SEC's rulemaking process. Unlike the structure of the current SEC website, the new database allows users to

sort rules by date, status (e.g., proposed, completed, etc.), and SEC division (e.g., Investment Management, Trading and Markets, etc.).

The SEC announcement of the new database is available at: <u>http://www.sec.gov/news/statement/chair-white-announcement-rulemaking-index.html</u> and the SEC rulemaking index is available at: http://www.sec.gov/rules/rulemaking-index.shtml.

People

US Federal Deposit Insurance Corporation Announces Appointment of Lawrence Gross, Jr., to Chief Information Officer

On October 8, 2015, the US Federal Deposit Insurance Corporation announced the appointment of Lawrence Gross, Jr., as the new Chief Information Officer. As CIO, Mr. Gross will advise senior leaders at the FDIC on a number of information technology-related issues including governance, investment, program management, strategic planning, and security. Mr. Gross has over 25 years of experience in technology-related roles both in the federal government and in military service.

The FDIC press release is available at: https://www.fdic.gov/news/news/press/2015/pr15080.html.

Federal Reserve Bank of New York Names Kevin Stiroh Executive Vice President and Head of the Financial Institution Supervision Group

On October 8, 2015, the Federal Reserve Bank of New York announced that Kevin Stiroh has been named executive vice president in the New York Federal Reserve's Integrated Policy Analysis Group as well as head of its Financial Institution Supervision Group, effective October 26, 2015. In his new roles, Mr. Stiroh will lead the teams responsible for supervising financial institutions in the Federal Reserve's Second District. Mr. Stiroh has over 15 years of experience at the New York Federal Reserve and holds a Ph.D. in economics from Harvard University.

The New York Federal Reserve press release is available at: http://www.newyorkfed.org/newsevents/news/aboutthefed/2015/oa151008.html.

US Securities and Exchange Commission Names Michael Liftik Deputy Chief of Staff

On October 5, 2015, the SEC announced that Michael Liftik will replace Erica Williams as deputy chief of staff of the agency. Since April 2013, Mr. Liftik has been a Senior Advisor to SEC Chair Mary Jo White, counseling on enforcement policy matters and cases. He has worked with the SEC staff and other agencies to address issues such as the asset management industry, cybersecurity, and macroeconomic trends. He also serves as the representative of Chair White on the Deputies Committee of the Financial Stability Oversight Council.

The SEC press release is available at: http://www.sec.gov/news/pressrelease/2015-233.html.

European Stability Mechanism New Appointments

On October 8, 2015, the European Stability Mechanism appointed Andrew Harkness and Jean Guill to its Board of Auditors for a period of three years.

The press release is available at: <u>http://www.esm.europa.eu/press/releases/two-new-members-join-esm-board-of-auditors.htm</u>.

Upcoming Events

October 19, 2015: FCA MiFID II Wholesale Firms conference.

November 3, 4, 5, 9 and 11, 2015: FCA workshop for Credit Unions: Senior Managers and Certification Regimes Improving Individual Accountability.

November 4, 2015: European Central Bank Forum on Banking Supervision (registration by invitation only).

November 11, 2015: BoE Open Forum.

November 13, 2015: EBA public hearing on the harmonized definition of default under the CRR.

November 18 and 19, 2015: EBA Fourth Annual Research Workshop: Financial regulation and the real economy: a micro prudential perspective.

Upcoming Consultation Deadlines

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

October 30, 2015: PRA and FCA Consultations on implementation of ring-fencing transfer schemes.

October 31, 2015: ESMA Consultation on draft Implementing Technical Standards under MiFID II and MiFIR.

November 9, 2015: FCA Consultation on Part I of Implementation of UCITS V Directive.

December 7, 2015: FCA Consultation on Part III of Implementation of UCITS V Directive.

December 7, 2015: PRA and FCA Consultation on Regulatory References.

December 7, 2015: CPMI Consultation on Correspondent Banking Reforms.

December 22, 2015: FCA and HM Treasury Consultation on Public Financial Guidance.

December 22, 2015: FCA and HM Treasury Call for Input on Improving Access to Financial Advice for Consumers.

December 24, 2015: ESMA consultation on RTS for the European Single Electronic Format under the Transparency Directive.

January 6, 2016: European Commission Consultation on EU Covered Bond Framework.

January 6, 2016: European Commission Consultation on EU Venture Capital Investment Funds Regulation and European Social Entrepreneurships Funds Regulation.

January 22, 2016: EBA Consultation on draft guidelines on application of definition of default under the CRR.

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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