



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.

In this Issue (please click on any title to go directly to the corresponding discussion):

Bank Prudential Regulation & Regulatory Capital	2
US Banking Agencies Issue FAQs on the Regulatory Capital Rule	2
US Banking Agencies Permit Wells Fargo to Begin Using Advanced Approaches Framework	2
Regulation on Reporting of Supervisory Financial Information Under the Single Supervisory Mechanism Comes into Effect	2
European Banking Authority Makes Recommendations on Equivalence of Confidentiality Regimes.....	2
Prudential Regulation Authority Publishes Further Parts of the PRA Rulebook.....	3
Derivatives	3
US Commodity Futures Trading Commission Staff Issues No-Action Relief for Swap Dealers Entering into Swaps with Legacy Special Purpose Vehicles.....	3
International Swaps and Derivatives Association Highlights Concerns Over Lack of Harmonization of Trading Obligation Rules	4
Financial Services	4
European Securities and Markets Authority Announces Centralized Data Projects	4
People	4
Richard Taft Named Deputy Comptroller for Credit Risk.....	4
Maryann Kennedy and Kris McIntire Named Deputy Comptrollers for Large Bank Supervision	5
Prudential Regulation Authority Board Member Steps Down.....	5
Upcoming Events	5

Bank Prudential Regulation & Regulatory Capital

US Banking Agencies Issue FAQs on the Regulatory Capital Rule

On April 6, 2015, the US Office of the Comptroller of the Currency, the US Board of Governors of the Federal Reserve and the US Federal Deposit Insurance Corporation issued answers to certain frequently asked questions on the regulatory capital rule. The topics addressed in the FAQs include the following: (i) the definition of capital; (ii) separate account and equity exposures to investment funds; (iii) high volatility commercial real estate exposures; (iv) other real estate and off-balance-sheet exposures; (v) qualifying central counterparty questions; (vi) credit valuation adjustment questions; and (vii) other miscellaneous questions.

The full text of the FAQs is available at: <http://www.occ.gov/news-issuances/bulletins/2015/bulletin-2015-23a.pdf>.

US Banking Agencies Permit Wells Fargo to Begin Using Advanced Approaches Framework

On March 31, 2015, the US Board of Governors of the Federal Reserve and the US Office of the Comptroller announced that Wells Fargo – one of the largest global systemically important financial institutions – will be permitted to use the “advanced approaches” capital framework to calculate and publicly disclose its risk-based capital requirements as of the second quarter of 2015.

The US advanced approaches framework is available for the largest US banks following a trial or “parallel run” in which the bank proves its ability to meet disclosure requirements for the capital framework under the advanced approach method for four consecutive calendar years. Currently, seven other US banks use the advanced approaches framework. Previously, Wells Fargo used the standardized approach to calculate risk-based capital.

The Federal Reserve Board press release is available at:

<http://www.federalreserve.gov/newsevents/press/bcreg/20150331a.htm>.

Regulation on Reporting of Supervisory Financial Information Under the Single Supervisory Mechanism Comes into Effect

On March 31, 2015, the Regulation of the European Central Bank on reporting of supervisory financial information was published in the Official Journal of the European Union. The Regulation sets out the requirements for significant and less significant banks to report supervisory financial information to their relevant national regulator. The Regulation applies to all banks that fall under the Single Supervisory Mechanism as well as any branches of banks established outside of the SSM where the branch operates in a Eurozone Member State or another Member State that has opted into the SSM. The aim of the Regulation is to ensure that both significant and less significant firms report a common minimum set of information to national regulators, which will then be passed to the ECB. The Regulation came into effect on April 1, 2015.

The Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.086.01.0013.01.ENG.

European Banking Authority Makes Recommendations on Equivalence of Confidentiality Regimes

On April 1, 2015, the European Banking Authority published its recommendations on the equivalence of the confidentiality regimes of third country supervisory authorities. Under the EU Capital Requirements Directive, third country supervisory authorities may participate in a college of supervisors set up for an international cross-border bank if: (i) it is considered appropriate for that authority to participate and (ii) the authority is subject to confidentiality requirements that are equivalent to those set out in the EU Capital Requirements Directive. The EBA's recommendations only relate to the equivalence of the confidentiality regimes. The appropriateness issue is to be

determined by each college of supervisors. The EBA recommends that the confidentiality regimes of the supervisory authorities in the following countries should be considered as equivalent to the CRD IV requirements: Bosnia-Herzegovina, Brazil, Canada, China, FYR Macedonia, Mexico, Montenegro, Serbia, Singapore, Switzerland, Turkey and the United States.

The EBA Recommendation is available at: <http://www.eba.europa.eu/documents/10180/1032035/EBA-REC-2015-01+Recommendations+on+the+equivalence+of+confidentiality+regimes.pdf>.

Prudential Regulation Authority Publishes Further Parts of the PRA Rulebook

On April 2, 2015, the Prudential Regulation Authority published further Rules and Supervisory Statements and Policy Statements that will form part of the PRA Rulebook. The new Rulebook parts include verification of standing data rules and internal governance rules. The new Supervisory Statements cover internal governance, exercising certain functions under the Building Societies Act 1986 and supervising building societies' treasury and lending activities. Also published is a new Policy Statement on the PRA's approach to insurance business transfers. The PRA is creating a stand-alone PRA Rulebook and intends to launch the new Rulebook website online in summer 2015. The current PRA Handbook sits alongside the Financial Conduct Authority's Handbook, inherited from the Financial Services Authority.

The PRA Rulebook is available at: <http://fshandbook.info/FS/html/PRA/D226> and the additional parts to the PRA Rulebook are available at: <http://www.bankofengland.co.uk/pru/Pages/publications/ps/2015/ps715.aspx>.

Derivatives

US Commodity Futures Trading Commission Staff Issues No-Action Relief for Swap Dealers Entering into Swaps with Legacy Special Purpose Vehicles

On March 31, 2015, the CFTC issued no-action relief, subject to specified conditions, to provisionally registered swap dealers from compliance with certain CFTC regulations. The regulations relate to business conduct standards with counterparties and swap trading relationship documentation when entering into swaps with certain special purpose vehicles ("SPVs") in existence prior to October 10, 2013. Such swaps are referred to as "Legacy SPV Swaps" and the documentation governing the Legacy SPV Swaps are referred to as "Legacy SPV Swap Documentation." As outlined in the request for the no-action relief, SPVs are entities established for very limited purposes and the permitted activities of SPVs, therefore, are significantly limited through covenants contained in their constitutive documents and transaction agreements. Since they are not operating entities, SPVs rely on third-party service providers to satisfy the SPV's obligations under the Legacy SPV Swap Documentation and the various structured finance transaction agreements. As the specified CFTC regulations were not contemplated or addressed under the Legacy SPV Swap Documentation and related structured finance transaction agreements, there are consequent legal and practical impediments to third-party service providers taking the steps on behalf of SPVs that may be necessary to comply with the regulatory obligations set forth under the CFTC regulations.

In the no-action relief, the CFTC stated that no enforcement action would be taken against swap dealers for failure to comply with certain CFTC regulations as such regulations may apply to a Legacy SPV Swap.

The CFTC Staff Letter 15-21 is available at:

<http://www.cftc.gov/ucm/groups/public/@lrlattergeneral/documents/letter/15-21.pdf>.

International Swaps and Derivatives Association Highlights Concerns Over Lack of Harmonization of Trading Obligation Rules

On April 1, 2015, the International Swaps and Derivatives Association published a document entitled “Path Forward for Centralized Execution of Swaps.” The Path Forward is a set of principles which aim to promote consistency between the regulatory rules adopted by different jurisdictions for the mandatory trading of derivatives on an exchange or electronic trading platform. ISDA is concerned that market fragmentation will continue and increase if US, European and other regulators do not reconcile their requirements. ISDA suggests that the US regulations are inconsistent with its principles and that changes need to be made to the US trade execution rules for a harmonized international regime to be achieved. The principles are: (i) the trading liquidity of a derivatives contract should be determined by reference to specific objective criteria; (ii) derivatives contracts that are subject to the trading obligation should be able to trade on a number of different types of centralized venues; and (iii) trading venues should offer flexible execution mechanisms that take into account the trading liquidity and unique characteristics of a particular category of swap.

The Path Forward is available at: <http://www2.isda.org/news/isda-outlines-path-forward-for-centralized-execution-of-swaps>.

Financial Services

European Securities and Markets Authority Announces Centralized Data Projects

On April 1, 2015, the European Securities and Markets Authority announced the launch of two centralized data projects relating to obligations under the European Market Infrastructure Regulation, the Markets in Financial Instruments Regulation and the Market Abuse Regulation. The projects are:

- The Instrument Reference Data Project which will provide a central facility for instrument and trading data and the calculation of transparency and liquidity thresholds. This facility is expected to go live in early 2017.
- The Trade Repositories Project which will provide a single access point to trade repository data under EMIR. This data facility is expected to go live in 2016.

ESMA has agreed to develop the centralized data solutions following requests from EU national regulators. The projects will allow ESMA to collect data directly from trading venues and trade repositories and make that data publicly available through a centralized system.

ESMA's announcement is available at: <http://www.esma.europa.eu/news/ESMA-launches-centralised-data-projects-MiFIR-and-EMIR?t=326&o=home>.

People

Richard Taft Named Deputy Comptroller for Credit Risk

On April 1, 2015, Richard Taft was named as Deputy Comptroller for Credit Risk at the OCC, starting in May. As a principal advisor on credit risks facing the banking system, he will oversee the Commercial and Retail Credit Policy units.

Maryann Kennedy and Kris McIntire Named Deputy Comptrollers for Large Bank Supervision

On Friday, April 3, 2015, the OCC named Maryann H. Kennedy and Kris A. McIntire Deputy Comptrollers for Large Bank Supervision. In this role, Ms. Kennedy and Mr. McIntire will oversee the supervision of a portion of the OCC's large bank portfolio.

Prudential Regulation Authority Board Member Steps Down

On March 31, 2015, the Bank of England announced that non-executive PRA board member, Iain Cornish, would be stepping down with immediate effect.

Upcoming Events

April 8, 2015: EBA public hearing on the IRB approach under CRD IV.

April 20, 2015: Live Chat with Jonathan Hill, European Commissioner for Financial Stability, Financial Services and Capital Markets Union.

May 4, 2015: US banking agencies – the Federal Reserve Board, the OCC, and FDIC – outreach meeting which forms part of the agencies' regulatory review under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 to review and identify outdated or unnecessary regulation.

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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