SHEARMAN & STERLING LLP

FINANCIAL INSTITUTIONS ADVISORY & FINANCIAL REGULATORY GROUP
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Financial Regulatory Developments Focus

In this newsletter, we provide a snapshot of the principal US, European and global financial regulatory developments of interest to banks, investment firms, broker dealers, market infrastructures, asset managers and corporates.

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

Bank Prudential Regulation & Regulatory Capital

US Federal Deposit Insurance Corporation Issues Proposal Revising Provisions of Securitization Safe Harbor Rule

On January 21, 2015, the US Federal Deposit Insurance Corporation ("FDIC") issued a proposed rule revising certain provisions of the Securitization Safe Harbor rule regarding the treatment of financial assets transferred in the process of a securitization or participation in a FDIC receivership. The rule, if finalized as proposed, would clarify the retention of economic interest in the credit risk of securitized financial assets. The amendment would be effective on the same timeline as the credit risk retention rule adopted under Section 15G of the Securities Exchange Act.

The Federal Register notice is available at: http://www.gpo.gov/fdsys/pkg/FR-2015-01-30/pdf/2015-01499.pdf.

US Federal Deposit Insurance Corporation Issues Proposal Amending Regulations Related to "Fair Credit Reporting"

On January 21, 2015, the FDIC issued a proposed rule amending regulations related to "Fair Credit Reporting." The three proposed amendments are as follows: (i) rescinding and removing the provisions of FDIC's Part 334; (ii) rescinding and removing 12 CFR Part 391 Subpart C and amending 12 CFR Part 334 of the FDIC's existing Rules and Regulations; and (iii) amending the definition of "creditor" in the Red Flag Identity Theft rule to implement the Red Flag Program Clarification Act of 2010. Overall, the revisions would streamline FDIC rules and eliminate unnecessary regulations.

The Federal Register notice is available at: http://www.gpo.gov/fdsys/pkg/FR-2015-01-30/pdf/2015-01499.pdf.

US Federal Reserve Board Issues Interim Final Rule Raising Threshold for Regulatory Capital Requirements for Qualifying Small Bank Holding Companies

On January 29, 2015, the Board of Governors of the Federal Reserve System ("Federal Reserve Board") issued a proposed rule expanding the applicability of the Small Bank Holding Company Policy Statement ("Policy Statement") and reducing reporting requirements for certain bank holding companies and savings and loan holding companies. The Federal Reserve Board further adopted an interim final rule excluding savings and loan companies with less than $500 million in consolidated assets that meet certain qualitative requirements in the Policy Statement from regulatory capital requirements.

The interim final rule is available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20150129b2.pdf and the Policy Statement is available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20150129b1.pdf.

European Central Bank Addresses Significant Banks on Practices under New Supervisory Framework

On January 27, 2015, a letter from the Chair of the Supervisory Board ("the Board") of the Single Supervisory Mechanism ("SSM") at the European Central Bank ("ECB"), addressed to the management of significant banks, discussing the practices that apply in the new supervisory setting of the SSM was published by the ECB. The ECB assumed its new prudential supervisory role for banks in the Eurozone under the SSM in November 2014. The SSM creates a new system of financial supervision, under which the ECB directly supervises 120 significant banking groups, and sets and monitors supervisory standards for other Eurozone banks by working more closely with national regulators. The letter states that written clarification has been requested by banks on the processes and practices that apply within the new supervisory framework. The Board recognizes that a broad variety of practices relating to the supervision of significant banks exist across member states, and confirms that the existing process under the SSM Regulation will apply until further notice. In the meantime, the ECB will proactively assess the merits of various other approaches.

The ECB letter is available at: https://www.bankingsupervision.europa.eu/banking/letterstobanks/shared/pdf/2015/150127letter_supervision_processes.en.pdf?ce996ad57ed2d71ca5487b2e8b12524a.

UK HM Treasury Publishes Outcome of its Consultation on Leverage Ratio Framework

On February 2, 2015, HM Treasury published the outcome to its consultation on the leverage ratio framework. The Financial Policy Committee ("FPC") previously recommended that HM Treasury enable the FPC to give directions to the Prudential Regulation Authority ("PRA") to set leverage ratio requirements and buffers for PRA-regulated institutions. HM Treasury's consultation paper sought views on how to implement the FPC's recommendations and grant the FPC such powers of direction, and also included draft legislation. The FPC stated that the directions should include a power for the FPC to set a minimum leverage ratio requirement, a supplementary leverage ratio buffer to apply to global systemically important banks and major UK institutions, as well as a countercyclical ratio buffer. The outcome sets out the Government's position in light of the consultation responses, stating that the Government believes the FPC is well-placed to consider the level of leverage in the UK financial system which is prudent, whilst the system continues to contribute to economic growth. The Government also intends to grant the FPC a power to set supplementary ratio buffers. As for the countercyclical ratio buffer, the Government states that the FPC is required to act proportionally when exercising this power, and that this requirement to act proportionally justifies the granting of this power to the FPC.

The outcome is available at: https://www.gov.uk/government/consultations/financial-policy-committees-leverage-ratio-framework.

Basel Committee on Banking Supervision Final Standard for Revised Pillar 3 Disclosure Requirements

On January 28, 2015, the Basel Committee on Banking Supervision ("Basel Committee") issued its final standard for revised Pillar 3 disclosure requirements. The revised requirements aim to enhance the transparency of the approaches taken by banks in calculating their minimum regulatory capital requirements and allow market participants to access key information and compare banks' disclosures of risk-weighted assets. In aiming to improve the comparability and consistency of disclosures, new templates are introduced, and five guiding principles for disclosures have been agreed. The disclosures should be: (i) clear; (ii) comprehensive; (iii) meaningful to users; (iv) consistent over time; and (v) comparable across banks. The new requirements will supersede the existing Pillar 3 requirements from the end of 2016.

The final standards are available at: http://www.bis.org/bcbs/publ/d309.pdf.

Consumer Protection

US Consumer Financial Protection Bureau Releases Bulletin on Treatment of Confidential Supervisory Information

On January 27, 2015, the US Consumer Financial Protection Bureau ("CFPB") issued a compliance bulletin on the treatment of confidential supervisory information ("CSI"). The bulletin is intended to remind persons in possession of confidential information, including confidential supervisory information, that they may not, except for certain exceptions, disclose confidential information to third parties. The bulletin defines CSI, reviews certain disclosures of CSI and discusses in detail that private confidentiality and non-disclosure agreements do not alter the legal restrictions on the disclosure of CSI.

The bulletin is available at: http://files.consumerfinance.gov/f/201501_cfpb_compliance-bulletin_treatment-of-confidential-supervisory-information.pdf.

US Federal Deposit Insurance Corporation Releases Second Video on CFPB Mortgage Rules

On January 27, 2015, the FDIC announced the release of the second in a series of three technical assistance videos intended to help bank employees meet regulatory requirements. These videos address compliance with certain mortgage rules issued by the CFPB. The first video, released on November 19, 2014, covered the Ability to Repay and Qualified Mortgage Rule, and the second video covers the Loan Originator Compensation Rule. The third video, expected to be released in February, will cover mortgage servicing rules. The servicing rules address servicers' obligations to consumers.

The first video is available at: https://www.fdic.gov/regulations/resources/director/technical/atr.html and the second video is available at https://www.fdic.gov/regulations/resources/director/technical/lo.html.

US Consumer Financial Protection Bureau Issues Proposed Amendments to Mortgage Rules

On January 29, 2015, the CFPB proposed amendments to its mortgage rules to better accommodate responsible lending by small creditors, particularly in rural and underserved areas. If the rules are finalized as proposed, a greater number of financial institutions would be able to offer certain types of mortgages in rural and underserved areas. Among other things, the amendments would: (i) expand the definition of a small creditor; (ii) include mortgage affiliates in the calculation of small-creditor status; (iii) expand the definition of "rural" areas; and (iv) provide grace periods for small creditor status. The proposed rules will be open for public comment until March 30, 2015.

The proposal is available at: http://files.consumerfinance.gov/f/201501_cfpb_amendments-relating-to-small-creditors-and-rural-or-underserved-areas.pdf.

Derivatives

Opinion on Draft RTS on Clearing Obligation for Interest Rate Swaps under EMIR

On January 30, 2015, the European Securities and Markets Authority ("ESMA") published an Opinion on the draft Regulatory Technical Standards ("RTS") on the clearing obligation for interest rate swaps under the European Market Infrastructure Regulation ("EMIR"). The draft RTS specify details such as the class of OTC derivatives that should be subject to the clearing obligation and the dates from which the clearing obligation takes effect. ESMA's Opinion follows on from the Commission's recent communication to ESMA of its intention to endorse the draft RTS with amendments. The amendments proposed by the Commission include postponing the starting date of the frontloading requirement (which is the obligation to clear OTC derivative contracts after a central counterparty has been authorized under EMIR and before the date of application of the clearing obligation), clarifying the calculation of the threshold for investment funds and excluding non-EU intragroup transactions from the clearing obligation. In the Opinion, ESMA addresses the changes made by the Commission to the RTS and, in particular, states that the processes that would exempt non-EU intragroup transactions from the clearing obligation are not appropriate. ESMA states that it can provide technical advice on the issue if requested, so that an alternative solution can be found and delays to the implementation of the clearing obligation can be avoided.

The draft RTS and Opinion are available at:
http://www.esma.europa.eu/system/files/rts_for_irs_annexe_acte_autonome_nlw_part1_v1.doc and
http://www.esma.europa.eu/news/ESMA-publishes-opinion-draft-RTS-clearing-obligation-interest-rate-swaps?t=326&o=home.

International Organization of Securities Commissions' Final Report on Risk Mitigation Standards for Non-Centrally Cleared OTC Derivatives

On January 28, 2015, the International Organization of Securities Commissions ("IOSCO") published its final report on risk mitigation standards for non-centrally cleared OTC derivatives, setting out nine standards to help strengthen the non-centrally cleared OTC derivatives market. The standards include risk mitigation techniques relating to trade confirmation, valuation with counterparties, dispute resolution and cross-border transactions, and aim, amongst other issues, to enhance legal certainty over the terms of non-centrally cleared OTC derivatives transactions and shorten the amount of time it may take to resolve disputes.

The final report is available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD469.pdf.

Enforcement

Enforcement Powers over Auditors and Actuaries Granted to UK Regulators

On January 27, 2015, HM Treasury published the Financial Services and Markets Act 2000 (Regulation of Auditors and Actuaries) (PRA Specified Powers) Order 2015 (the "Order") together with an explanatory memorandum. The Order gives effect to enforcement powers previously granted to the PRA over auditors and actuaries under the Financial Services Act 2012 (the "Act"). The PRA was not able to use these powers until HM Treasury granted effect to those powers under this Order. The Order allows the PRA to apply dissuasive sanctions such as monetary fines or disqualification measures on auditors and actuaries that breach PRA rules or statutory duties. The PRA intends to issue further guidance on the use of these enforcement powers following a consultation. The Order enters into force on February 20, 2015.

The Order and explanatory memorandum are available at:
http://www.legislation.gov.uk/uksi/2015/61/pdfs/uksi_20150061_en.pdf and
http://www.legislation.gov.uk/uksi/2015/61/pdfs/uksiem_20150061_en.pdf.

Financial Market Infrastructure

Launch of Global Legal Entity Identifier Foundation Website

On January 26, 2015, the Global Legal Entity Identifier Foundation ("GLEIF") announced the launch of its new website. GLEIF was created by the Financial Stability Board and established the Legal Entity Identifier, a 20-digit alphanumeric code which is a common standard and a unique key made public that is to be used unambiguously to identify legal entities in the course of various activities such as financial transactions across different markets, products and regions.

The new website is available at: http://www.gleif.org.

Financial Services

European Commission Launches Plans to Establish Capital Markets Union

On January 28, 2015, the European Commission stated in a press release that it had launched plans to establish a Capital Markets Union ("CMU") by holding an orientation debate at the College of Commissioners. The establishment of the single market for all 28 EU member states will aim to lower the costs of funding within the EU, remove barriers to cross-border investment and increase sources of funding for businesses. In a separate press release dated January 30, 2015, the European Commission stated that a consultation on the CMU will be launched on February 18, 2015, and that a plan of action will be released during the third quarter of 2015.

The press releases are available at: http://europa.eu/rapid/press-release_IP-15-3800_en.pdf and http://europa.eu/rapid/press-release_AGENDA-15-3941_en.pdf.

UK Regulator Consults on New Rules for Depositor, Dormant Account and Policyholder Protection

On January 30, 2015, the PRA published a consultation paper proposing transitional provisions and new rules to the PRA Rulebook, and amendments to the PRA Handbook arising out of rules previously proposed in the Depositor Protection and Policyholder Protection consultation papers published by the PRA in October 2014. The measures proposed under the consultations aim to minimize any possible adverse impact that could be caused to UK financial stability through the failure of a PRA-deposit taker, dormant account fund operator or PRA-authorized insurer. It also aims to ensure an effective compensation system to eligible depositors, dormant account holders and policyholders. The consultation includes new rules on compensation arrangements related to dormant account protection as well as a statement of policy on the PRA's expectations of the Financial Services Compensation Scheme when dealing with dormant accounts. The consultation period ends on February 27, 2015.

The consultation paper is available at: http://www.bankofengland.co.uk/pra/Documents/publications/cp/2015/cp415.pdf.

People

US Office of the Comptroller of the Currency Announces New Deputy Comptroller for Special Supervision

On January 26, 2015, Michael Brickman was named Deputy Comptroller for Special Supervision at the Office of the Comptroller of the Currency.

US Security and Exchange Commission Chair's Chief Counsel to Leave

On January 29, 2015, Robert E. Rice, Chief Counsel to the US Securities and Exchange Commission ("SEC") Chair Mary Jo White, announced he will leave the SEC at the end of February.

Securities and Exchange Commission Announces New Regional Director

On January 28, 2015, Erin Schneider was named Associate Regional Director in the San Francisco Office of the SEC.

Bank of England Announces New Appointments to Executive Team

On January 27, 2015, the Bank of England announced the appointment of two new directors to its executive team. Alex Brazier is appointed as Executive Director for Financial Stability, Strategy and Risk from March 16, 2015 and will also be a member of the Financial Policy Committee from April 1, 2015. Sam Wood is appointed as Executive Director for Insurance Supervision from April 7, 2015.

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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