

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.

Our latest quarterly Governance & Securities Law Focus newsletter is available at:

<http://www.shearman.com/~media/Files/NewsInsights/Publications/2014/04/Governance-and-Securities-Europe-Bulletin-CMAM-041014.pdf>.

Derivatives

CFTC Staff Issues Time-Limited No-Action Letter on the Applicability of Oral Recording Requirements

On 25 April 2014, the US Commodity Futures Trading Commission's ("CFTC") Division of Swap Dealer and Intermediary Oversight and Division of Market Oversight ("Divisions") issued a time-limited no-action letter that provides relief to commodity trading advisors that are members of designated contract markets or swap execution facilities. The relief covers the oral recording requirement set forth in CFTC Regulation 1.35(a), in connection with the execution of swaps. The letter extends no-action relief that previously was granted by the Divisions in CFTC Letter Nos. 13-77 and 14-33.

The letter issued on 25 April will expire on 31 December 2014.

The CFTC no-action letter is available at:

<http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-60.pdf>.

Regulatory Capital

OCC Proposes Increase in Assessments for National Banks and Federal Savings Associations with Total Assets of More Than \$40 Billion

On 28 April 2014, the US Office of the Comptroller of the Currency ("OCC") published a notice of proposed rulemaking in the Federal Register seeking comment on a proposal to raise assessments on national banks and federal savings associations with total assets over \$40 billion.

Under the proposal, the marginal assessment rate for national banks and federal savings associations (“FSAs”) with more than \$40 billion in assets would increase by 14.5 percent beginning 30 September 2014. The increase in assessments would range from 0.32 percent to 14 percent, depending on the total assets of the institution as reflected on its 30 June 30 2014 Consolidated Report of Condition and Income. The average increase in assessments for affected banks and FSAs would be 12 percent. The proposal would not increase assessment rates for banks and FSAs with \$40 billion or less in total assets.

Comments on the notice are requested by 12 June 2014. The proposal also requests comment on a conforming amendment to 12 C.F.R. part 8 to make it consistent with the proposed increase in assessments. The proposal would also amend part 8 to add a reference to section 318 of the Dodd-Frank Act, which reaffirmed the OCC’s broad discretion to set assessments and to determine the assessment methodology. The proposal would update 12 C.F.R. 8.8 to reflect the current title of the Notice of Fees and Assessments.

The OCC’s notice of proposed rulemaking is available at:

<http://www.occ.gov/news-issuances/news-releases/2014/nr-occ-2014-62a.pdf>.

Financial Services

European Commission Begins Level 2 Process for MiFID II

On 24 April 2014, the European Commission published a request to the European Securities and Markets Authority (“ESMA”) seeking technical advice for the preparation of the delegated and implementing acts required under the revised Markets in Financial Instruments Directive II (“MiFID II Directive”) and Markets in Financial Instruments Regulation (“MiFIR”) (together known as MiFID II). The MiFID II Directive covers market structure, exemptions from regulation, organizational and conduct of business requirements for investment firms and trading venues, powers of national regulators, sanctions, and rules for third-country (non-EEA) firms operating through a branch in the EU. MiFIR sets out requirements for trade transparency, a trading obligation for investment firms trading shares, the mandatory trading of derivatives on organized venues and the provision of services by third-country firms with or without a branch and confers a number of new powers on national regulators, ESMA and the European Banking Authority. Much of the detail of the primary legislation will be set out in Level 2 measures such as implementing and delegated acts, including technical standards. ESMA’s deadline to deliver the technical advice has been set to six months after the entry into force of MiFID II, which is estimated to take place in June 2014.

The Commission’s request is available at:

http://ec.europa.eu/internal_market/securities/docs/isd/mifid/140423-esma-request_en.pdf.

ECB Cooperation Framework Regulation for SSM

On 25 April 2014, the European Central Bank (“ECB”) published a Regulation which sets out the framework for cooperation between the ECB and national regulators under the Single Supervisory Mechanism (“SSM”). The SSM provides for the prudential supervision of Eurozone banks (and banks of other member states that opt into the SSM) under the ECB in cooperation with national regulators, with the ECB being responsible for direct supervision of banks that are considered significant. The ECB Regulation sets out the methodology and procedures for assessing whether a bank is a significant bank and the cooperation and exchange of information between the ECB and national regulators. The Regulation was adopted by the ECB on 16 April 2014 and will come into force on the twentieth day following its publication in the Official Journal of the EU.

The Regulation is available at:

http://www.ecb.europa.eu/ecb/legal/pdf/en_reg_ecb_2014_17_f_sign.pdf.

European Commission Adopts Equivalence Decisions on Credit Rating Agency Regulation

On 28 April 2014, the European Commission announced that it had adopted five equivalence decisions which confirm that the rules in Argentina, Brazil, Hong Kong, Mexico and Singapore are equivalent to the EU rules on credit rating agencies. Credit rating agencies in those countries will be able to apply for EU certification so that their ratings can be used by EU financial institutions for regulatory purposes. The European Commission adopted equivalence decisions for the US, Canada and Australia in October 2012.

The announcement and provisional text of the decisions is available at:

http://ec.europa.eu/internal_market/rating-agencies/index_en.htm.

People

New UK Complaints Commissioner Appointed

On 25 April 2014, the Bank of England and the Financial Conduct Authority (“FCA”) announced that Anthony Townsend will be the new Complaints Commissioner from 1 May 2014. He will be responsible for the final stage of investigations into complaints against how the Bank of England and the FCA exercise their functions. Currently Mr. Townsend is Chair of the UK and Ireland Regulatory Board of the Royal Institute of Chartered Surveyors.

The FCA press release is available at:

<http://www.fca.org.uk/news/press-releases/antony-townsend-new-complaints-commissioner>.

FCA Appoints Two New Advisers

David Saunders and Gunner Burkhart have been appointed as senior advisers at the FCA. David Saunders, formerly chief executive of the Competition Commission, will work with the competition department and the new Payment

Services Regulator (once operational). Gunner Burkhardt, former managing director of Nomura International, will advise on wholesale and markets issues.

The FCA press release is available at:

<http://www.fca.org.uk/news/press-releases/fca-appoints-two-new-senior-advisers>.

Mauri Osheroff to Retire After Nearly 40 Years at SEC

On 23 April, 2014, the US Securities and Exchange Commission (“SEC”) announced that Mauri L. Osheroff, associate director for regulatory policy in the Division of Corporation Finance, is retiring on 30 April after nearly 40 years at the SEC.

New Secretary General for Basel Committee

On 23 April 2014, the Basel Committee on Banking Supervision announced the appointment of William Coen as its next Secretary General, for an initial term of three years. Mr. Coen will also serve as the Chairman of the Basel Committee’s Policy Development Group.

The press release is available at:

<http://www.bis.org/press/p140423.htm>.

Events

29 April 2014: US House of Representatives Committee on Financial Services hearing entitled “Oversight of the SEC’s Agenda, Operations, and FY 2015 Budget Request”.

30 April 2014: US House of Representatives Committee on Financial Services hearing entitled “Examining How Technology Can Promote Consumer Financial Literacy”.

1 May 2014: US House of Representatives Committee on Financial Services hearing entitled “Legislative Proposals to Enhance Capital Formation for Small and Emerging Growth Companies, Part II”.

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This memorandum 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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