

## 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 Extends Time-Limited No-Action Relief for Swap Dealers and Major Swap Participants from Compliance with Valuation Reporting Obligations**

On 1 July 2014, the US Commodity Futures Trading Commission's ("CFTC") Division of Market Oversight extended the relief provided in no-action letter 13-34. The no-action letter provides relief to Swap Dealers and Major Swap Participants from the obligation to report valuation data for cleared swaps as required by CFTC regulations. The no-action letter provides that the CFTC will not take enforcement action against a Swap Dealer or Major Swap Participant for failure to comply with such reporting requirements until 30 June 2014.

The full text of the CFTC no-action letter is available at:

<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-90.pdf>.

#### **CFTC Extends No-Action Relief Provided in CFTC Letter No. 13-41**

On 27 June 2014, the CFTC's Division of Market Oversight issued a letter providing a time-limited extension of the relief provided in CFTC Letter No. 13-41. CFTC Letter No. 13-41, issued on 28 June 2013, provides time-limited no-action relief for certain CFTC reporting counterparties to mask legal entity identifiers, other enumerated identifiers, and other identifying terms, and permits certain reporting entities to mask identifying information in certain enumerated jurisdictions.

The full text of the CFTC no-action letter is available at:

<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-89.pdf>

#### **CFTC Extends Comment Period for its Proposals on Position Limits for Physical Commodity Derivatives and Aggregation**

On 27 June 2014, the CFTC announced a 30-day extension of the comment period for two rulemakings: (i) a proposal to which would establish speculative position limits for 28 exempt and agricultural commodity futures and options contracts and

the physical commodity swaps that are economically equivalent to such contracts (“Position Limits Proposal”), and (ii) a proposal to amend existing regulations setting out the CFTC’s policy for aggregation under its position limits regime (“Aggregation Proposal”). All comments on the two rulemaking proposals are due by 27 July 2014.

The full text of the Position Limits Proposal and Aggregation Proposal is available at: <http://www.cftc.gov/LawRegulation/FederalRegister/ProposedRules/2014-12427.html>.

#### **CFTC Extends Time-Limited, No-Action Relief to Futures Commission Merchants**

On 26 June 2014, the CFTC’s Division of Swap Dealer and Intermediary Oversight issued an extension of two previously issued time-limited, no-action relief actions (CFTC letters 14-02 and 14-45) to the Futures Industry Association, its member Futures Commission Merchants (“FCMs”), and similarly situated FCMs. The no-action letter extends the relief from compliance with certain conditions associated with the receipt of customer funds by an FCM to 31 October 2014.

The full text of the CFTC no-action letter is available at:

<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-88.pdf>.

## **Compensation**

#### **RTS on Categories of Staff Come into Force**

On 26 June 2014, the regulatory technical standards (“RTS”) on the criteria to be applied in determining categories of staff whose professional activities impact upon a firm’s risk profile came into force. The RTS are directly applicable across the EU. The European Commission published, on the same day, FAQs on the RTS which, amongst other things confirm that the RTS are not an exhaustive set of criteria and that firms are expected to apply other appropriate criteria in order to meet the regulatory obligations on remuneration.

## **Regulatory Capital**

#### **Final Draft Standards Under CRR**

The European Banking Authority (“EBA”) published final draft standards for consideration for adoption by the European Commission. The final draft standards, required under the Capital Requirements Regulation (“CRR”), are:

- RTS on the minimum margin periods of risk (“MPOR”) that a financial institution, acting as a clearing member of a central counterparty, may use to calculate its capital requirements for exposure to clients under the CRR. MPOR can be used by firms using the internal model method and those using other methods - mark-to-market, standardized method or original exposure method. The RTS specify MPOR differently for different asset classes to derivatives.

- RTS on the conditions for assessing the materiality of extensions and changes of internal approaches when calculating own funds requirements for market risk. The RTS will supplement the standards for credit and operational risk published in the Official Journal of the European Union on 20 May 2014.

The final draft RTS on MPOR are available at:

<http://www.eba.europa.eu/documents/10180/748016/EBA-RTS-2014-09+Final+draft+RTS+on+Margin+Periods+of+Risk.pdf/229f2d89-f126-4abf-9a9e-cb772de65b2f>.

The RTS for market risk are available at: <http://www.eba.europa.eu/-/eba-publishes-final-draft-technical-standards-on-conditions-for-assessing-materiality-of-extensions-and-changes-of-internal-approaches-for-market-risk>.

#### Implementing Regulations Under CRD IV Published

The following implementing technical standards (“ITS”) under the Capital Requirements Directive (“CRD”) and CRR, together known as CRD IV, have been published in the Official Journal of the European Union: (i) ITS with regard to supervisory reporting of institutions; (ii) ITS on the format, structure, contents list and annual publication date of the information to be disclosed by national regulators; and (iii) ITS on the application of the joint decision process for institution-specific prudential requirements.

ITS on supervisory reporting of institutions is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2014:191:FULL&from=EN>.

ITS on disclosure by national regulators is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0650&from=EN>.

On the joint decisions making process is available at:

[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL\\_2014\\_188\\_R\\_0002&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_188_R_0002&from=EN).

#### EBA Consults on Standards for Colleges of Supervisors

On 3 July 2014, the EBA launched a public consultation on (i) RTS and ITS for colleges of supervisors, including for supervisory activities when a cross-border firm begins to fail or does fail; and (ii) standards for joint decision on approval of prudential requirements and models to be used. The standards are required under the CRR and the CRD.

The consultation paper is available at: <http://www.eba.europa.eu/-/eba-consults-on-technical-standards-on-home-host-cooperation-in-the-eu-banking-sector>.

#### EBA Advice on CRR Requirements for Credit Risks Related to Derivatives

On 2 July 2014, the EBA published its advice to the European Commission on whether the CRR should be revised so as not to require firms to include any element of own funds, fair value gains and losses on derivative liabilities of the firm that result from changes to its own credit standing. The EBA considers that currently the CRR needs only to be amended to align the wording with Basel III. The European Commission must report to the European Parliament and the

Council of the EU on this issue, including any proposed amending legislation, by 31 December 2014.

The EBA advice is available at:

<http://www.eba.europa.eu/documents/10180/657547/EBA-Op-2014-05+-+Technical+Advice+on+DVA.pdf>.

#### **Lists for the Calculation of EU Capital Requirements for Credit Risk**

On 2 July 2014, the EBA published a set of lists, required under the CRR, to assist EU banks and investment firms to determine their capital requirements for credit risk. The lists are:

- List of EU regional governments and local authorities to be treated as central governments, with a risk weight of 0%;
- List of changes to risk weights or stricter criteria for exposures securitized by immovable property;
- List of changes to minimum LGD for retail exposures secured by residential or commercial immovable property;
- List of exposures to be treated according to the Standardized Approach; and
- List of physical collateral where firms can assume that the conditions under CRR are met.

The lists are available at: <http://www.eba.europa.eu/-/eba-publishes-lists-for-the-calculation-of-capital-requirements-for-credit-risk>.

#### **Report and Recommendations on the EU Covered Bonds Framework**

On 1 July 2014, the EBA published a report on the covered bonds framework throughout the EU and an opinion on the preferential capital treatment of covered bonds. The report is a comprehensive overview of the national regulatory and supervisory regimes of EU member states for covered bonds, providing key features, practices and advice on the conditions justifying preferential risk weight treatment for certain covered bonds. The report also includes advice to the European Commission, requested under the CRR, to inform the Commission's report to the European Parliament and Council on whether the current capital treatment of covered bonds is suitable. The opinion covers recommendations on the risk weight preferential treatment of covered bonds, additional criteria for qualifying for preferential treatment and the appropriateness of including specific asset classes.

The report and opinion are available at: <http://www.eba.europa.eu/-/eba-supports-capital-treatment-of-covered-bonds-but-calls-for-additional-eligibility-criteria>.

On 30 June 2014, the European Systemic Risk Board (the "ESRB") published a recommendation, dated 18 June 2014, addressed to EU national regulators on setting countercyclical buffer rates. The guidance is required under the CRD. The ESRB also published its paper that informed the recommendation, called 'Operationalising the countercyclical capital buffer: indicator selection, threshold

identification and calibration options'. The recommended measures must apply from the date by which each member state requires banks in its jurisdiction to maintain institution-specific countercyclical capital buffers.

The Recommendation is available at:

<http://www.esrb.europa.eu/news/pr/2014/html/pr140630.en.html>.

#### **Guidelines on Funding Plans of Banks**

On 30 June 2014, the EBA published final Guidelines on harmonized definitions and templates for funding plans for banks. Funding plans represent a firm's projected balance sheet in normal conditions ('business as usual') as opposed to how a firm would fund itself under stress. The Guidelines aim to harmonize reporting of funding plans by banks to national regulators who then provide data to the EBA. Harmonized reporting will allow the EBA to assess the viability of funding plans across the EU.

The Guidelines are available at:

<http://www.eba.europa.eu/-/eba-publishes-guidelines-on-harmonised-definitions-and-templates-for-funding-plans-of-credit-institutions>.

#### **EBA Launches Consultation on CyB Disclosure Requirements**

On 27 June 2014, the EBA launched a public consultation on proposed draft RTS on the key information firms must disclose on their compliance with the requirement for a countercyclical capital buffer ("CyB"). The consultation proposes two disclosure templates that aim to harmonize the publicly available information available on a firm-specific CyB and the geographical location of the exposures determining that buffer. Responses to the consultation are due by 27 September 2014.

The consultation paper is available at:

<http://www.eba.europa.eu/documents/10180/741727/EBA-CP-2014-11+%28CP+on+RTS+on+CBB+Disclosure+Art+440+CRR%29.pdf>.

#### **EBA Launches Consultation on the Permanent and Temporary Uses of the IRB Approach**

On 26 June 2014, the EBA launched a consultation on proposed draft RTS on conditions for application of the permanent and temporary uses of the Standardized Approach (the risk management approach requiring firms to use ratings from external rating agencies to quantify credit risk) by firms that have permission from their national regulator to use the Internal Ratings Based ("IRB") approach, which instead allows them to apply their own internal estimates of risk, in order to calculate their credit risk capital requirements under the CRR. The consultation closes on 26 September 2014.

The consultation paper is available at:

<http://www.eba.europa.eu/documents/10180/740958/EBA-CP-2014-10+CP+on+draft+RTS+on+roll+out+and+PPU+of+IRB+approach.pdf>.

### **EBA Final Guidelines on Disclosure of Encumbered and Unencumbered Assets**

On 27 June 2014, the EBA published its final Guidelines on disclosure of encumbered and unencumbered assets by banks and investment firms. The disclosure of unencumbered assets is required under the CRR and disclosure of encumbered assets is required under a European Systemic Risk Board Recommendation issued in December 2012 on the funding of credit institutions. The disclosure is intended to enable market participants to compare relevant banks and investment firms clearly and consistently in terms of their liquidity and insolvency profiles. The principles and templates included in the Guidelines will enable disclosure of all information related to encumbered and unencumbered assets, including all central bank operations conducted by institutions. The Guidelines will be reviewed by the EBA after one year and will be the basis for binding technical standards on disclosure that the EBA plans to develop by 2016.

The Guidelines are available at: <http://www.eba.europa.eu/-/eba-publishes-guidelines-on-disclosure-of-encumbered-and-unencumbered-assets>.

### **Revised List of ITS Validation Rules Issued by EBA**

On 24 June 2014, the EBA issued a revised list of validation rules that detail the required standards and formats for submitting data in its ITS on supervisory reporting. While some rules have been revised, others have been deactivated completely. The EBA will publish further revisions of the list as more information becomes available.

The press release and updated validation rules are available at: <http://www.eba.europa.eu/-/eba-issues-revised-list-of-its-validation-rules>.

### **EBA Report on Impact on Undue Volatility of Institutions' Own Funds**

On 24 June 2014, the EBA published a report analyzing whether the revised IAS 19 Employee Benefits in conjunction with the deduction of net pension assets and changes in net pension liabilities lead to undue volatility of institutions' own funds. The EBA concludes that there may be limited volatility of own funds in most cases, due to changes in accounting and prudential requirements. The European Commission must, by 31 December 2014, prepare a report, taking into account the EBA report, on the issue, together with a legislative proposal (if appropriate) which would introduce an adjustment of defined net benefit pension fund assets or liabilities for the calculation of own funds.

The EBA report is available at: <http://www.eba.europa.eu/documents/10180/534414/EBA+Report+on+the+impact+on+the+volatility+of+own+funds+from+defined+pension+plans.pdf>.

### **PRA Consults on Various Issues Under CRD IV**

On 30 June 2014, the Prudential Regulation Authority ("PRA") launched a consultation on proposed changes to its rules and supervisory statements for credit risk mitigation, credit risk, governance and market risk. The consultation covers, amongst other things, proposals on (i) permissions to use own estimates on volatility adjustments; (ii) permissions to use the advanced internal ratings-based

approach for exposures to central governments, central banks and public sector entities; (iii) a rule to introduce stricter criteria for the application of a 50% risk weight to certain commercial real estate exposures located in non-EEA countries; and (iv) guidance for firms on limitations on directorships and how to report risks not in VaR requirements.

The consultation paper is available at:

<http://www.bankofengland.co.uk/pr/ Documents/publications/cp/2014/cp1214.pdf>

#### **PRA Updates Capital and Leverage Ratios Requirements for UK Firms**

On 26 June 2014, the PRA published an updated Supervisory Statement on capital and leverage ratios for the eight major UK banks and building societies (Barclays, Co-operative Bank, HSBC, Lloyds Banking Group, Nationwide, Royal Bank of Scotland, Santander UK and Standard Chartered) to meet from 1 July 2014.

Those firms will be expected to meet (i) a 7% common equity tier 1 capital ratio on the definition of capital set out in the CRR and the PRA Rulebook; and (ii) a 3% end-point Tier 1 leverage ratio.

The Supervisory Statement is available at:

<http://www.bankofengland.co.uk/pr/ Documents/publications/ss/2013/ss313.pdf>.

#### **Data Available for Evaluating the Individual Systemic Footprint of Large US Bank Holding Companies**

On 26 June 2014, the Board of Governors of the Federal Reserve System (“Federal Reserve Board”) announced that data is now available for use evaluating the individual systemic footprint of 33 large US bank holding companies. The data covers five categories often used when considering the potential systemic risk of a banking organization: size; interconnectedness; complexity; substitutability, which is a measure of how easily a firm’s activities can be replaced by another firm; and cross-jurisdictional activity, which includes foreign liabilities and claims.

The information will be published annually based on data from the previous calendar year.

The full text of the Federal Reserve Board press release announcing the publication is available at:

<http://www.federalreserve.gov/newsevents/press/bcreg/20140626a.htm>.

#### **US Federal Agencies Issue Host State Loan-to-Deposit Ratios**

On 2 July 2014, the Federal Reserve Board, the Federal Deposit Insurance Corporation (“FDIC”), and the Office of the Comptroller of the Currency (“OCC”) issued an updated list of host state loan-to-deposit ratios. Host state loan-to-deposit ratios are used to determine compliance with section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1995 (“section 109”).

Generally, section 109 prohibits: (i) a bank from establishing or acquiring branches outside of its home state primarily for the purpose of deposit production and (ii) branches of banks controlled by out-of-state bank holding companies from

operating primarily for the purpose of deposit production. To ensure compliance, section 109 provides a two-step process utilizing loan-to-deposit ratios to determine compliance with the statutory requirements. A bank that fails both steps is held to be in violation of section 109 and is subject to sanctions by the appropriate agency.

The updated host state loan-to-deposit ratios are available at:

<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20140702a1.pdf>.

### Basel Committee Proposes Revisions to Basel III Pillar 3 Disclosure Requirements

On 24 June 2014, the Basel Committee for Banking Standards (the “Basel Committee”) launched a consultation on proposed revisions to the Basel III Pillar 3 disclosure requirements. The proposals are the result of concerns emerging about the lack of consistency on the form and granularity of information disclosed and on the interpretation of the requirements. Responses to the consultation are due by 26 September 2014.

The consultation paper is available at: <http://www.bis.org/publ/bcbs286.pdf>.

## Credit Ratings

### Final Draft RTS Supplementing the Credit Rating Agencies Regulation

On 24 June 2014, the European Securities and Markets Authority (“ESMA”) provided the European Commission with its final report and draft RTS on (i) disclosure by issuers, originators and sponsors of structured finance transactions; (ii) the content and presentation of rating information that credit ratings agencies must submit to ESMA for credit ratings that are not produced for a client; and (iii) the content and format of reporting by credit rating agencies to ESMA of fees the agencies charge. ESMA was required to prepare the final draft RTS under the Credit Rating Agency Regulation. The European Commission must assess the RTS and consider whether or not to adopt them.

ESMA’s final report is available at: <http://www.esma.europa.eu/news/Press-Release-ESMA-publishes-draft-RTS-CRA3-transparency-requirements?t=326&o=home>.

## Financial Market Infrastructure

### SEC Announces Order for Tick Size Pilot Plan

On 25 June 2014, the Securities and Exchange Commission (“SEC”) announced that it has ordered the national securities exchanges and the Financial Industry Regulatory Authority (“FINRA”) to act jointly to develop and file with the SEC a national market system plan by 25 August 2014 to implement a targeted 12 month pilot program that will widen minimum quoting and trading increments (tick sizes) for certain small capitalization stocks.

The pilot will last for one year and include stocks with: a market capitalization of \$5 billion or less; an average daily trading volume of one million shares or less;

and a share price of \$2 per share or more. The pilot will consist of one control group and three test groups with 300 securities in each test group selected by stratified sampling.

Any proposed plan submitted to the SEC will be open to public comment before implementation.

The full text of the SEC order is available at:

<http://www.sec.gov/rules/other/2014/34-72460.pdf>.

## Financial Services

### EBA Opines that Virtual Currencies be Formally Regulated

On 4 July 2014, the EBA published an opinion recommending that virtual currencies become subject to an EU regulatory regime. The EBA considers that a substantial legislative proposal on regulatory the virtual currencies will be required, covering areas such as segregation of client accounts, capital requirements, governance of market participants and scheme governance. As an immediate response to the risks identified by the EBA, the European authority has advised national regulators to discourage banks, investment firms, payment institutions and e-money institutions from buying, holding or selling virtual currencies.

The EBA opinion is available at: <http://www.eba.europa.eu/-/eba-proposes-potential-regulatory-regime-for-virtual-currencies-but-also-advises-that-financial-institutions-should-not-buy-hold-or-sell-them-whilest-n>.

### ESMA Guidance for Retail Investors on Investor Protection Under MiFID II

On 30 June 2014, ESMA published a guide for retail investors on the enhanced protection provisions included in the new Markets in Financial Instruments Regulation and Directive (together known as “MiFID II”). MiFID II has been published in the Official Journal of the European Union and will apply from 2017. Supplementary standards and guidance are still due to be produced to flesh out much of the primary legislation. The Level 2 regulations were recently published for consultation. ESMA’s guidance provides an overview of the changes coming for investors in financial instruments covering, inducements, disclosure obligations of investment firms, product governance, safeguarding client assets and transparency.

ESMA’s guidance is available at: <http://www.esma.europa.eu/news/ESMA-publishes-retail-investor-guide-MiFID-II?t=326&o=home>.

### Recommendations on the Fiduciary Duties of Investment Intermediaries

On 1 July 2014, the UK Law Commission published its reports and recommendations on the fiduciary duties of investment intermediaries. Key recommendations include (i) incorporation of the guidelines to investment intermediaries on the extent to which non-financial factors can be taken into account in investment decisions; (ii) amendments to certain relevant secondary legislation; (iii) that independent governance committees of providers of

contract-based pensions should owe a statutory duty of care to scheme members (such committees will be mandatory from April 2015); and (iv) that the Government should review the current operation of intermediated shareholding.

The report is available at:

[http://lawcommission.justice.gov.uk/areas/fiduciary\\_duties.htm](http://lawcommission.justice.gov.uk/areas/fiduciary_duties.htm).

#### **New Client Money Rules for ISAs**

On 1 July 2014, the Financial Conduct Authority (“FCA”) published its Policy Statement and final rules on amendments to the client money rules for Individual Savings Accounts (“ISAs”). The rules, which came into force on 1 July 2014, require investment firms managing stocks and share ISAs to hold any money within those accounts as client money. Investment firms managing cash ISAs may elect to opt into the client money regime and hold money in those accounts as client money.

The Policy Statement is available at: <http://www.fca.org.uk/your-fca/documents/policy-statements/ps14-10>.

#### **SEC Adopts Cross-Border Security-Based Swap Rules**

On 25 June 2014, the SEC adopted the first of a series of rules and guidance on cross-border security-based swap activities for market participants. The rules and guidance: (i) explain when a cross-border transaction must be counted toward the requirement to register as a security-based swap dealer or major security-based swap participant and (ii) addresses the scope of the SEC’s cross-border anti-fraud authority. Concurrently, the SEC adopted a procedural rule regarding the submission of “substituted compliance” requests. This rule permits market participants who are in compliance with comparable regulations in non-US jurisdictions to be granted a request for substituted compliance by the SEC, which would be a determination that such market participant satisfied certain Title VII security-based swap requirements by complying with comparable non-US rules.

The full text of the final rules is available at:

<http://www.sec.gov/rules/final/2014/34-72472.pdf>.

#### **Survey on Securitization Markets**

On 3 July 2014, the Basel Committee and the International Organization of Securities Commissions (“IOSCO”) launched a survey on securitization markets which is covering factors such as factors that are hampering the developing of securitization markets, factors deterring investor participation and the development of simple and transparent securitization structures. Responses to the survey are due by 25 July 2014.

The survey is available at: <https://www.iosco.org/surveys/2014-TFSM-Survey-for-Market-Participants/?page=signup>.

#### **Basel Committee Revises Principles for Effective Supervisory Colleges**

On 26 June 2014, the Basel Committee published revised “Principles for effective supervisory colleges”. The original principles were published in 2010. The

revised Principles aim to assist home and host regulators ensure that colleges of regulators for internationally active banks and investment firms work effectively.

The revised Principles are available at: <http://www.bis.org/publ/bcbs287.pdf>.

#### **Risk Identification and Assessment Methodologies for Securities Regulators**

On 26 June 2014, IOSCO published a report on risk identification and assessment methodologies for securities regulators. The report is intended to assist securities regulators in identifying and assessing emerging and potential systemic risks by providing a range of methods and tools already used which regulators may consider using, including in combined format.

The report is available at:

<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD443.pdf>.

#### **Federal Agencies Release Public Sections of Resolution Plans for Financial Firms**

On 2 July 2014, the Federal Reserve Board and the FDIC released certain public portions of annual resolution plans for seventeen financial firms. The plans are mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) which requires that bank holding companies with total consolidated assets of \$50 billion or more and nonbank financial companies designated by the Financial Stability Oversight Council (“FSOC”) periodically submit resolution plans to the FDIC and the Federal Reserve Board. Under the Dodd-Frank Act, each plan is divided into a public section and a confidential section and must describe the company’s strategy for rapid and orderly resolution under the US Bankruptcy Code in the event the company experiences material financial distress or failure.

The public sections of the plans are available on the FDIC and Federal Reserve Board websites at: <http://www.fdic.gov/regulations/reform/resplans/> and <http://federalreserve.gov/bankinforeg/resolution-plans.htm>

#### **US Federal Agencies Release Addendum to the Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure**

On 2 July 2014, the OCC, the Federal Reserve Board and the FDIC jointly issued an addendum to the Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure applicable to all OCC-supervised institutions in a holding company structure. The addendum was issued to ensure that insured depository institutions (“IDIs”) in a consolidated group maintain appropriate relationships regarding the payment of taxes and treatment of tax refunds. The addendum requires that IDIs and their holding companies ensure that their tax-allocation agreements (i) expressly state that the holding companies are agents for the IDIs and (ii) are consistent with the requirements of Sections 23A and 23B of the Federal Reserve Act.

The full text of the interagency addendum is available at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-06-19/pdf/2014-14325.pdf>.

## Funds

### Types of AIFMs Under the AIFMD

On 24 June 2014, secondary legislation on RTS determining the type of alternative investment fund manager (“AIFM”) managing a fund was published in the Official Journal of the European Union. The legislation supplements the Alternative Investment Fund Managers Directive, providing detail on when an AIFM will be considered to be managing an open-ended or close-ended fund.

The RTS are available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2014:183:FULL&from=EN>.

## Enforcement

### US Federal Reserve Board Announces Civil Money Penalty and Issues Cease and Desist Order Against BNP Paribas, S.A.

On 30 June 2014, BNP Paribas, S.A. agreed to plead guilty and to pay \$8.97 billion of penalties to various federal agencies for violations of US sanctions laws, subject to court approval of the plea agreement.

The actions against BNP Paribas were taken by the Asset Forfeiture and Money Laundering Section of the Criminal Division of the Department of Justice, the Federal Reserve Board, the Office of the US Attorney for the Southern District of New York, the United States Department of Treasury’s Office of Foreign Assets Control, the New York County District Attorney’s Office, and the New York Department of Financial Services (“NYDFS”) for violations of US sanctions laws and various New York State laws.

The Federal Reserve Board announced the BNP Paribas will also be subject to a cease and desist order, requiring the bank to take certain remedial steps to ensure its compliance with US law in its ongoing operations and to pay a civil monetary penalty of \$508 million. Concurrently, the NYDFS announced that BNP Paribas agreed to, among other things, terminate 13 senior employees of the bank and to suspend US dollar clearing operations through its New York Branch and other affiliates for one year.

### Federal Reserve Board Announces Money Penalty and Issues Consent Order Against Regions Bank

On 25 June 2014, the Federal Reserve Board announced that Regions Bank, Birmingham, Alabama, will pay a \$46 million penalty for misconduct related to the process followed by the bank in the first quarter of 2009 for identifying and reporting non-accrual loans. The Federal Reserve also issued a consent order requiring Regions Bank to continue to improve its relevant policies and procedures. The Federal Reserve’s consent order is being issued jointly with the Alabama Department of Banking, which is assessing Regions Bank a \$5 million penalty, and in conjunction with actions by the Securities and Exchange Commission.

The Federal Reserve also announced enforcement actions against three former employees of Regions Bank who were responsible for the misconduct addressed in the action against the bank. Separately, the SEC is taking action against the three former employees of Regions Bank for their misconduct in connection with the first quarter 2009 reporting of non-accrual loans. The SEC also entered into a deferred prosecution agreement with Regions Financial Corp., Regions Bank's parent holding company.

The full text of the SEC enforcement order is available at:

<http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542168845>.

The full text of the Federal Reserve Board enforcement order is available at:

<http://www.federalreserve.gov/newsevents/press/enforcement/enf20140625a1.pdf>.

### **Federal Reserve Board Publishes Report on Independent Foreclosure Review and the Payment Agreement for Mortgage Loan Servicers**

On 7 July 2014, the Federal Reserve Board published a report regarding the Independent Foreclosure Review ("IFR") and the Payment Agreement. The Payment Agreement was a result of enforcement actions issued by the Federal Reserve Board and the OCC between April 2011 and April 2012. In that period, the OCC and the Federal Reserve Board issued enforcement actions against 16 mortgage loan servicers for deficient practices in mortgage loan servicing and foreclosure processing. As part of the enforcement actions, the servicers were required to hire independent consultants to conduct file reviews to determine if borrowers who suffered financial injury were eligible for financial remediation. To settle their obligations under the IFR, 15 mortgage servicers entered into the Payment Agreement with the OCC and the Federal Reserve Board. The Payment Agreement provided that the servicers would pay \$3.9 billion in direct cash payments to borrowers and approximately \$6.1 billion in foreclosure prevention assistance.

The report issued by the Federal Reserve Board contains information on the process of review of the foreclosure files as well as updated information on direct borrower payments and other assistance from the Payment Agreement.

The full text of the IFR report is available at:

<http://www.federalreserve.gov/publications/other-reports/files/independent-foreclosure-review-2014.pdf>.

## **Consumer Protection**

### **US Federal Agencies Issue Guidance for Home Equity Lines of Credit Nearing End-of-Draw Periods**

On 1 July 2014, the Federal Reserve Board, the FDIC, the OCC, the National Credit Union Administration and the Conference of State Bank Supervisors issued guidance regarding home equity lines of credit ("HELOCs") which were nearing their "end-of-draw" periods, which refers to that time when the principal amount of the HELOC must begin to be repaid. The guidance encourages financial institutions to communicate with borrowers ahead of the pending reset and

provides broad principles to manage risk as HELOCs reach their end-of-draw periods. The guidance also discusses the appropriate accounting and reporting procedures for HELOCs nearing their end-of-draw periods.

The full text of the interagency guidance is available at:

<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20140701a1.pdf>.

## People

### **James E. Grimes Joins SEC's Office of Administrative Law Judges**

On 30 June 2014, the SEC announced that James E. Grimes has joined the SEC's Office of Administrative Law Judges as an Administrative Law Judge.

The full text of the SEC press release is available at:

<http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542202073>.

### **Geoffrey Aronow, Chief Counsel, Office of International Affairs, to Leave SEC**

On 27 June 2014, the SEC announced that Geoffrey Aronow, the chief counsel and senior policy advisor in the Office of International Affairs, will leave the SEC this month.

The full text of the SEC press release is available at:

<http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542188112>.

### **SEC Enforcement Division's Chief Operating Officer Adam Storch to Leave SEC**

On 27 June 2014, the SEC announced that Adam D. Storch, chief operating officer and managing executive of the SEC Enforcement Division, is leaving the SE next month.

The full text of the SEC press release is available at:

<http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542190329Events>.

## Events

17 July 2014: FCA Annual Public Meeting 2014.

10 July 2014: Hearing entitled "Legislation to Reform the Federal Reserve on its 100-year Anniversary (US House Committee on Financial Services).

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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