

Financial Regulatory Developments Focus



In this issue:

Derivatives

Regulatory Capital

Financial Services

Funds

Enforcement

Events

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

Common Data Format for Pre-LOUs for the Sharing or Publication of Data

The Regulatory Oversight Committee (“ROC”) of the Global Legal Entity Identifier System (“GLEIS”) released initial details of a common data format that will be used as a standard by pre-local operating units (“pre-LOUs”) when publishing pre-LEI data, reducing complexity for users of pre-LEI data. The newly released information, in the form of a data dictionary, includes precise definitions of data elements such as legal name, business register name and LEI registration status. It also sets out how funds should be treated.

The new information and dictionary is available at:

http://www.leiroc.org/publications/gls/lou_20140224.pdf.

Regulatory Capital

Regulatory Technical Standards on Credit Risk Adjustment Published in Official Journal

On 27 February 2014, the Regulatory Technical Standards (“RTS”) specifying the calculation of specific and general credit risk adjustments under the Capital Requirements Regulation (“CRR”) were published in the Official Journal of the European Union. The RTS provide for the identification and calculation of General and Specific Credit Risk Adjustments. The RTS will come into force on 19 March 2014 and will apply across the European Union.

A copy of the RTS is available at:

http://new.eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.057.01.0003.01.ENG.

EBA Consults on Margin Periods for Risk Used for Treatment of Clearing Members' Exposures to Clients

On 28 February 2014, the European Banking Authority (“EBA”) published a consultation paper on draft RTS for specifying the minimum margin periods of risk that clearing members may use for the calculation of their capital requirements for exposures to clients arising from cleared derivatives. Responses to the consultation are requested by 9 May 2014. The draft RTS are required under the CRR which provides for the treatment of centrally cleared derivatives. The EBA is due to submit final draft RTS to the European Commission by 30 June 2014.

The EBA’s consultation paper is available at:

<http://www.eba.europa.eu/documents/10180/615469/EBA-CP-2014-01+%28CP+on+RTS+on+Margin+Periods+of+Risk+CRR-304%29.pdf>.

PRA Consults on Proposed Approach to Supervising International Banks

On 26 February 2014, the Prudential Regulation Authority (“PRA”) published its proposed approach to supervising banks and designated investment firms operating in the UK which are not UK headquartered firms (“international banks”). The consultation paper, which includes a draft supervisory statement, proposed rules and an analysis of costs and benefits, focuses on branches of firms from outside the European Economic Area (“non-EEA firms”). The PRA intends to introduce (i) a rule requiring all international banks operating in the UK through branches to complete a new data collection return from 2015; and (ii) a requirement that all non-EEA firms take steps within their control to ensure adequate provision for UK branches is included in their resolution plans. A firm which could not comply with the latter rule would be likely to fail the Threshold Condition requiring a firm to have adequate non-financial resources to enable the firm to comply with all rules and requirements imposed by the PRA. The PRA also points out that firms from countries whose regulators are assessed by the PRA not be equivalent, will fail to meet the Threshold Condition that requires a firm to be capable of being effectively supervised by the PRA. Such firms will not be authorised to operate in the UK. Responses to the consultation are due by 27 May 2014.

The PRA consultation paper is available at:

<http://www.bankofengland.co.uk/pradocuments/publications/policy/2014/branchsupcp4-14.pdf>.

FDIC Issues Second Quarter 2014 CRA Examination Schedule

On 28 February 2014, the Federal Deposit Insurance Corporation (“FDIC”) issued the public list of institutions that it has scheduled for a Community Reinvestment Act (“CRA”) examination during the second quarter of 2014. The examination schedule reflects the effects of an institution’s size and CRA rating on examination frequency. Absent reasonable cause, an institution with \$250 million

or less in assets and a CRA rating of Satisfactory can be subject to a CRA examination no more frequently than once every 48 months. Absent reasonable cause, an institution with \$250 million or less in assets and a CRA rating of Outstanding can be subject to a CRA examination no more frequently than once every 60 months.

The full FDIC CRA Exam Schedule Listing for the second quarter of 2014 is available at:

<http://www.fdic.gov/regulations/community/exam/q2cra14.html>.

Federal Reserve Board Announces 30-Day Comment Period Extension for Proposed Rulemaking Regarding Physical Commodity Activities Conducted by Financial Holding Companies

On 27 February 2014, the Board of Governors of the Federal Reserve System (“Federal Reserve Board”) announced that it is extending the public comment period on an advance notice of proposed rulemaking regarding physical commodity activities conducted by financial holding companies. Comments are now due 16 April 2014.

The full notice of advance rulemaking is available at:

<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20140227a1.pdf>.

Federal Reserve Board Announces Release Dates for the Latest Supervisory Stress Tests Results and Related Results from the Comprehensive Capital Analysis and Review

On 25 February 2014, the Federal Reserve Board announced that results from the latest supervisory stress tests conducted as required under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) will be released on Thursday, 20 March 2014, and the related results from the Comprehensive Capital Analysis and Review (“CCAR”), will be released on Wednesday, 26 March 2014.

The Dodd-Frank Act stress tests are forward-looking exercises conducted by the Federal Reserve Board and large financial companies supervised by the Federal Reserve Board. The exercises help assess whether institutions have sufficient capital to absorb losses and support operations during adverse economic and financial market conditions over a period of nine quarters. The Dodd-Frank Act supervisory stress test results will include data such as post-stress capital ratios, revenue, and loss estimates under hypothetical adverse and severely adverse scenarios provided by the Federal Reserve Board.

CCAR is an annual exercise by the Federal Reserve Board to help assess whether the companies have robust, forward-looking capital planning processes that account for their unique risks and are supported by the firms’ risk-measurement and -management practices. CCAR results will include post-stress capital ratios under hypothetical adverse and severely adverse scenarios provided by the Federal Reserve Board and will reflect the capital actions the companies plan to undertake during the nine-quarter period. In addition to the quantitative results, the Federal

Reserve Board will indicate whether it has objected to a firm's capital plan based on qualitative grounds.

Financial Services

ECB Decision on Procedure for Admitting Non-Eurozone Member States to the SSM

On 27 February 2014, the European Central Bank ("ECB") published its decision (dated 31 January 2014) on the procedural aspects for requests by Member States outside of the Eurozone to become a part of the Single Supervisory Mechanism. The decision covers the requests, the assessment by the ECB and the ECB's decision as well as the procedure for termination of such arrangements.

The ECB's decision is available at:

http://www.ecb.europa.eu/pub/pdf/other/en_dec_2014_05_fen.pdf?5105e4c768e886be0f5844b03a868418.

ESMA Introduces "One-Stop-Shop" EU-wide Consolidated Registers of Regulated Companies

The European Securities and Markets Authority ("ESMA") has established and launched Consolidated Registers ("CRs") which ESMA describes as a "one-stop shop for EU regulated investment information".

The CRs are user-friendly reference tools which provide lists of:

- a. MiFID investment firms;
- b. UCITS management companies;
- c. alternative investment fund managers;
- d. sanctions; and
- e. prospectuses.

The CRs are compiled by ESMA, using information currently published on the websites of 31 EEA National Competent Authorities ("NCAs"). The NCAs will bear full responsibility for the accuracy and completeness of the data provided and ESMA will be working with the NCAs to ensure that complete up-to-date sets of data are available in the CRs.

The aim of the CRs is to enhance investor protection by providing public access to official information, and as a result, improving transparency within the single financial market.

The newly launched register can be found at:

<http://registers.esma.europa.eu/publication/start>.

FCA Provides Guidance on its Role in Regulating Commodity Markets

The Financial Conduct Authority (the "FCA") published, on 27 February 2014, two documents on regulation of the commodity markets. The first, "Commodity

Market Update”, sets out the FCA’s priorities in this area. The second, “Regulating the commodity markets: a guide to the role of the FCA” explains the regulatory framework, the role of the FCA and the key European legislation (EMIR, MiFID II, the Market Abuse Regulation and the proposed Benchmark Regulation) that will impact the commodity markets.

The FCA documents are available at:

<http://www.fca.org.uk/your-fca/documents/commodity-market-update-1402>.

Funds

Political Agreement on UCITS V Reached

The European Parliament and Council of the European Union have reached political agreement on the European Commission’s proposal to reinforce the rules for Undertakings for Collective Investment in Transferable Securities (“UCITS”). The new UCITS V rules aim to strengthen the level of protection for UCITS investors following the financial crisis and focuses on (i) clarification of the UCITS depositary’s functions and liability in circumstances where assets are lost in custody, (ii) rules governing remuneration policies which UCITS will be obliged to introduce and (iii) the harmonisation of the minimum administrative sanctions regime across Member States.

The European Commission’s statement is available at:

http://europa.eu/rapid/press-release_STATEMENT-14-27_en.htm.

Enforcement

FCA Fines Forex Capital Markets and FXCM Securities for Breach of Principles

On 24 February 2014, the FCA fined Forex Capital Markets Limited (“FXCM Ltd”) and FXCM Securities Limited (“FXCM Securities”) for breaches of the FCA’s Principles of Business, in particular the principles that a firm must treat its customers fairly and must deal with the FCA in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the firm of which the regulator would reasonably expect notice. The FCA found that FXCM Ltd had failed to treat its customers fairly because it failed to pass on favourable price movements to its customers and instead retained the benefit. Both FXCM Ltd and FXCM Securities had failed to disclose to the FCA that the US authorities had begun to investigate an FXCM Group company in July 2010 and the decision by the FXCM Group company to settle with the US authorities and pay redress to its US customers. The FCA considered that such information was important to it because it revealed weaknesses in the systems and controls of both firms and would have allowed the regulator to assess any potential impact on their UK customers. The FCA issued a joint fine of £4,000,000 (subsequently reduced by 20% to account for early settlement) and required both companies to pay redress to their UK customers (the final agreed amount was US\$9,941,970).

A copy of the final notice is available at:

<http://www.fca.org.uk/static/documents/final-notices/forex-capital-markets-limited.pdf>.

Events

5 March 2014: US House of Representatives Committee on Financial Services hearing entitled “The Growth of Financial Regulation and its Impact on International Competitiveness”.

5 March 2014: US House of Representatives Committee on Financial Services hearing entitled “Data Security: Examining Efforts to Protect Americans’ Financial Information”.

27 March 2014: EBA public hearing on draft RTS on margin periods for risk for the calculation of a clearing members’ exposure to clients.

EUROPE

BARNABAS W.B. REYNOLDS

T: +44 20 7655 5528
barney.reynolds@shearman.com
London

AZAD ALI

T: +44 20 7655 5659
azad.ali@shearman.com
London

ANNA DOYLE

T: +44 20 7655 5978
anna.doyle@shearman.com
London

ELLERINA TEO

T: +44 20 7655 5070
ellerina.teo@shearman.com
London

JAMES CAMPBELL

T: +44 20 7655 5570
james.campbell@shearman.com
London

THOMAS DONEGAN

T: +44 20 7655 5566
thomas.donegan@shearman.com
London

JOHN ADAMS

T: +44 20 7655 5740
john.adams@shearman.com
London

MARIA CHAN

T: +44 20 7655 5000
maria.chan@shearman.com
London

NATALIE CALDWELL

T: +44 20 7655 5722
natalie.caldwell@shearman.com
London

BILL MURDIE

T: +44 20 7655 5149
bill.murdie@shearman.com
London

KOLJA STEHL

T: +49 69 9711 1623
kolja.stehl@shearman.com
Frankfurt

MAK JUDGE

T: +44 20 7655 5182
mak.judge@shearman.com
London

OLIVER LINCH

T: +44 20 7655 5715
oliver.linch@shearman.com
London

AMERICAS

DONALD N. LAMSON

T: +1 202 508 8130
donald.lamson@shearman.com
Washington, DC

JENNIFER D. MORTON

T: +1 212 848 5187
jennifer.morton@shearman.com
New York

JARED R. GIANATASIO

T: +1.212.848 4384
jared.gianatasio@shearman.com
New York

RUSSELL D. SACKS

T: +1 212 848 7585
rsacks@shearman.com
New York

SYLVIA FAVRETTO

T: +1 202 508 8176
sylvia.favretto@shearman.com
Washington, DC

BRADLEY K. SABEL

T: +1 212 848 8410
bsabel@shearman.com
New York

CHRISTINA BROCH

T: +1 202 508 8028
christina.broch@shearman.com
Washington, DC

ABU DHABI | BEIJING | BRUSSELS | FRANKFURT | HONG KONG | LONDON | MILAN | NEW YORK | PALO ALTO
PARIS | ROME | SAN FRANCISCO | SÃO PAULO | SHANGHAI | SINGAPORE | TOKYO | TORONTO | WASHINGTON, DC

shearman.com

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.

599 LEXINGTON AVENUE | NEW YORK | NY | 10022-6069

Copyright © 2014 Shearman & Sterling LLP. Shearman & Sterling LLP is a limited liability partnership organized under the laws of the State of Delaware, with an affiliated limited liability partnership organized for the practice of law in the United Kingdom and Italy and an affiliated partnership organized for the practice of law in Hong Kong.