



BANKING & FINANCE LITIGATION UPDATE

ISSUE 67

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The Banking & Finance Litigation Update is published monthly and covers current developments affecting the Group's area of practice and its clients during the preceding month.

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If you would like further advice, please contact Paula Johnson on 08700 111 111.

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DOMESTIC BANKING

BANK OF ENGLAND

1. The Bank of England has indicated a move from its strategy of quantitative easing (QE) as a means to stimulate the economy and is instead promoting a more "mixed" strategy. The new governor of the Bank, Mark Carney, has instigated a major change away from QE, replacing it with other measures including guiding financial markets.

Financial Times, 18 July 2013

2. The Monetary Policy Committee of the Bank of England has agreed that interest rates will remain at 0.5 per cent and to hold quantitative easing at £375 billion for July.

Telegraph.co.uk, 4 July 2013

BARCLAYS

3. Barclays has issued its financial results for the first half of 2013, with pre-tax profits up by £800 million to £1.7 billion on the same figures for 2012. However, once provision for mis-selling claims for PPI and swaps were taken into account, profits were down by 17 per cent. Barclays also launched a shareholder rights issue and sale of convertible bonds in a bid to raise capital to fill a £13 billion hole in its finances identified by the Bank of England.

Telegraph, 31 July 2013

4. Absa, the third-largest lender in South Africa, has gained approval to buy Barclays operations in Africa which are valued at £859 million. In return, Barclays will receive a shareholding in Absa of over 60 percent.

Telegraph, 23 July 2013

5. The Abu Dhabi and Qatar sovereign wealth fund which helped to bail out Barclays Bank at the height of the financial crisis, by buying a 7 per cent stake in the business and injecting £3.5 billion of capital into the bank, has sold its share. The sale indicates the improvement in Barclay's fortunes since 2008, with the bank's share prices rising as well as its profits.

Financial Times, 19 July 2013

6. Barclays has hired Christine Sinclair, the acting director of retail banking at the FCA, to be its global head of compliance, wealth and investment management. She will work with Hector Sants, the former head of the Financial Services Authority ("FSA"), who joined the bank in 2012.

Times, 13 July 2013

CO-OPERATIVE BANK

7. The Co-operative Group has drawn up plans to fill a £1.5 billion capital hole in its banking subsidiary by injecting £1 billion itself and forcing bondholders to bear a £500 million loss on their £1.3 billion investment. The rescue plan needs the approval of 77% of bondholders. If they reject the deal the Group has threatened to put the bank into "resolution" with the Bank of England. Under resolution the bondholders would potentially lose everything and taxpayers might also be at risk.

Telegraph, 14 May 2013

8. The Co-op has appointed Sir Christopher Kelly to carry out a review into what caused the black hole in the bank's finances. The review will look at the decision to merge with Britannia Building Society as well as management structures, culture, governance and accounting practices.

Times, 13 July 2013

HSBC

9. In the latest example of the opening up of financial markets in China to overseas funds, regulators on the Chinese mainland have given approval for HSBC to invest renminbi onshore. A licence under China's renminbi qualified institutional investor (RQFII) scheme has been obtained by the asset management arm of HSBC, allowing the bank to place renminbi into China's bond and equity markets.

Financial Times, 26 July 2013

10. Alan Keir, the global head of commercial banking, has been named as the new chief executive of HSBC Bank plc. He will take over his new role in October, replacing Brian Robertson, who will become the new chairman of the Latin American division after 38 years in his current role. As well as overseeing the bank's operations in the UK, Mr Keir will also be responsible for those in continental Europe, Bermuda, Turkey, the Middle East and Africa. The regionalised structure of the bank means there is a dedicated chief executive for the UK bank, António Simões, who will report to Mr Keir.

The Times, 9 July 2013

11. HSBC is to exit its South Korean retail branch network and wealth management business, leaving its global banking and markets unit serving corporate clients as its only representation in the country. The closures are part of the bank's global review that has seen it shut or get rid of 52 businesses around the world since May 2011.

The Daily Telegraph, 6 July 2013

LLOYDS BANKING GROUP

12. UK Financial Investment has said in its annual report that Lloyds Banking Group is in a better position to be reprivatized than it was 12 months ago, even though the first sell-off of shares could result in a loss to the taxpayer.

Guardian, 16 July 2013

13. Lloyds Bank was named as best Bank (UK) and its chief executive, Antonio Horta-Osorio as Banker of the Year at the Euromoney Awards for Excellence.

Daily Telegraph 12 July 2013

14. Temasek, the Singapore sovereign wealth fund, has said that it is interested in buying around a quarter of the government's 39 percent stake in Lloyds Bank when the shares come up for sale later this year. The shares would be worth £4.5 billion.

Sunday Times, 7 July 2013

15. A consortium led by the former trade minister and ex-chairman of Standard Chartered, Lord Davies, is putting together a bid for a 20 percent stake in Lloyds Banking Group, worth £10 billion. The consortium will include the private equity firm Corsair Capital of which Lord Davies is vice-chairman.

Sunday Telegraph, 7 July 2013

16. The Treasury is eager to begin the sale of shares in Lloyds Banking Group as soon as possible.

Guardian, 6 July 2013

THE ROYAL BANK OF SCOTLAND

17. Following a request from The Royal Bank of Scotland ("RBS"), a High Court judge has ordered at least three different class-action lawsuits concerning the lender's £12bn rights issue in 2008 to be combined. The investors must file a new claim by 15 April 2014.

Telegraph, 31 July 2013

18. RBS has said that it intends to increase its share in the UK mortgage market by half again and has begun the search for new mortgage advisers as well as encouraging new borrowers through an advertising campaign. The bank already gives out over one tenth of all new mortgages granted in the UK, and has increased its share of the market by 100 percent since 2008 and the start of the financial crisis.

Guardian, 22 July 2013

19. The government has acknowledged that the sell-off of RBS shares is not as imminent a prospect as that of the other bailed out bank, Lloyds Banking Group, but has dismissed calls by the Parliamentary Commission on Banking Standards to review whether the bank should be split up into smaller parts, arguing that such a review would "generate significant additional costs".

Guardian, 9 July 2013

20. Institutional investors could obstruct the Government's potential plan to divide RBS into good and bad banks. Senior legal sources believe that if ministers push ahead with a plan to take ownership of the lender's problem loans by way of creating a bad bank, this would be viewed as a "related party" transaction as the state owns 81 per cent of the lender. RBS would be forced to let its minority investors, who own 19 per cent of the lender, vote on the deal.

Times, 6 July 2013

21. As political pressure over RBS's future direction continues, the lender has started an exercise to establish the feasibility and advisability of dividing itself into a "good bank" and "bad bank". A committee has been set up by five of the lender's most senior executives to look at the idea, in parallel to a Treasury exercise.

Financial Times, 4 July 2013

DOMESTIC GENERAL

22. As the Banking Bill began its passage through the House of Lords, Chancellor George Osborne faced accusations that he had watered down provisions to make the country's banks safer and had bowed to pressure from the City of London. Former Tory chancellor Lord Lawson, said that a coalition of cross-party peers would fight to make the bill more tough. The Treasury, he said, was guilty of an "unacceptable" attempt to lessen regulation of banks

Financial Times, 25 July 2013

23. David Green, the head of the Serious Fraud Office, has told The Times that the agency is preparing to bring new charges in connection with the Libor-rigging scandal. The charges are expected to be ready to be laid in the autumn and will be against individuals who are suspected of conspiring to manipulate the interbank interest rate. Three bankers have been arrested and charged so far as part of the SFO investigation into the scandal.

Times, 25 July 2013

24. A campaign featuring animated characters will be launched in September by the banking industry, aimed at encouraging customers to switch bank accounts. The campaign will appear across a number of platforms including television, newspapers, magazine and billboards. A new computer system, at a cost of £750 million, has been designed by the banks to enable them to speed up the time it takes to move current accounts from one bank to another. It is hoped that the changes will lead to a break in the stranglehold on the current account market held by the so-called 'big four' high street banks. The banks are hoping to prove to the government that a full-blown competition inquiry is not required.

Guardian, 23 July 2013

25. It has emerged that an almost two year investigation has been taking place into a suspected attempt by traders in the City to rig the Bank of England's flagship policy to stimulate the economy. MPs were told by Paul Fisher, the director of markets at the Bank, that regulators had been passed details of a "reprehensible" attempt to manipulate the government bond market. Initial investigations were carried out by the FSA and have been continued by the FCA.

Times, 17 July 2013

26. The Serious Fraud Office has charged two former interdealer brokers, Terry Farr and James Gilmour, with conspiracy to defraud over allegations they attempted to manipulate the yen-Libor rate. The men worked in rates trading with former UBS and Citigroup trader Tom Hayes and were arrested and released alongside him in December.

Financial Times, 16 July 2013

27. An estimated £2 billion bill is to be presented to Britain's banks by the FCA to compensate those customers who were mis-sold protection against identity theft. The FCA is making the banks pay up for policies sold by them on behalf of troubled card insurer CPP, which was fined in November 2012 over the policies it sold. The banks are being made to pay the bill by the watchdog as CPP lacks the resources to do so. A final announcement is expected to be made this summer.

Sunday Times, 14 July 2013

28. Business Secretary Vince Cable is to lead the way for the FCA to be able to disqualify bank directors following any future financial crisis. The prospect of other regulators being in a position to be able to ban the directors of companies falling under their

remit, will also be raised as part of a consultation on the rules surrounding company directors. Questions have been raised previously over the inability of regulators to take any action against those involved in the 2008 financial crash and the new measures are aimed at restoring faith in directors and the companies they work for.

Sunday Telegraph, 14 July 2013

29. NYSE Euronext, the transatlantic exchanges operator, has been appointed as the new administrator of the London Interbank Offer Rate (Libor). The group, based in New York, was selected for the role instead of two UK-based rivals by an independent commission set up by the UK government and will take over from the British Bankers' Association by early 2014. It will be charged with restoring confidence in the rate following the scandal that engulfed it in mid-2012.

Financial Times, 10 July 2013

30. Some of the world's top bankers have warned that the stability of the financial system is facing an increasing risk from fast-expanding clearing houses on both sides of the Atlantic. With previously over-the-counter trading shifting to centralised clearing houses, these have quickly gone right to the top of banks' lists of counterparties, causing increasing concern.

Financial Times, 8 July 2013

31. The outlook for the British banking sector has been raised by Moody's for the first time since the financial crisis of 2008. The rating agency has changed its outlook on UK banks from negative to stable, basing its decision on the improving capital position of banks and the outlook for the economy. Moody's has however retained a negative outlook for the long-term debt and deposit ratings of the large banks, believing that the authorities in the UK wish to avoid using taxpayer support should there be any collapses in future.

Guardian, 11 July 2013

32. With the Islamic finance sector set to expand to a predicted \$1.6 trillion in assets over the next few years, London is pushing for an increased share of the market. The city has received the backing of Boris Johnson, mayor of London, and Najib Razak, prime minister of Malaysia, over hosting the October meeting of the World Islamic Economic Forum, the first time it will have been held outside the Muslim world.

Financial Times, 4 July 2013

33. The FCA has warned that, despite having been fined billions of pounds in recent years for failures to take action against illegal financing, major UK banks are still vulnerable to being used by criminal gangs for money laundering or funding terrorism. Over half of the 17 banks analysed by the FCA, including the four main lenders in the UK, still lack the proper procedures and processes for ensuring non-involvement with money laundering facilitation.

Telegraph, 2 July 2013

EUROPEAN BANKING

BANK OF IRELAND

34. Following negotiations with the European Commission, the Bank of Ireland will be able to retain its life and pensions division. The compromise deal with the EU means that the bank must sell off its business bank and corporate lending business which operates in Britain. The timeframe for the sale was not revealed.

Times, 10 July 2013

35. The Financial Ombudsman Service has said that it does not know how long it will take for it to make a decision in relation to complaints it has received following the Bank of Ireland's decision to almost triple the mortgage rates of 12,500 of its customers.

Times, 8 July 2013

CREDIT SUISSE

36. Credit Suisse has announced a rise in profits, up by a third in the second quarter of 2013 from SwFr788 million this time in 2012, to SwFr 1.05 billion. There was also a strong rise in the profits of its investment banking division, where pre-tax profits increased by close on 50 per cent.

Times, 26 July 2013

DEUTSCHE BANK

37. Increased taxes and legal costs saw profits at Deutsche Bank halve in the second quarter. An extra €630 million was set aside by the bank to cover litigation losses, bringing the total set aside for legal issues to €3 billion. A warning over further costs still to come, including the need to increase capital reserves to meet regulatory requirements, saw the bank's share price drop.

The Times, 31 July 2013

EUROPEAN CENTRAL BANK

38. In moves that provoked strong reactions from the markets, both the European Central Bank ("ECB") and the Bank of England have made it clear that interest rates will remain at rock bottom for a considerable time. The president of the ECB, Mario Draghi, committed to not raising rates "for an extended period". His comments followed those of new Bank of England governor Mark Carney, who issued a statement after his first MPC meeting which said moves by the market suggesting a 2015 end to super-low interest rates were "not warranted."

Financial Times, 5 July 2013

SANTANDER

39. Santander UK announced a fall of a fifth in pre-tax profits for the first half of the year, down to £549 million. The fall in profits was a result of an increase in customers opening the new Santander current account which has a higher rate of interest. In total 600,000 new customers applied for the account. Banco Santander however, saw a 29 per cent increase in its net profits which rose to £1.9 billion.

Times, 31 July 2013

40. There was a fall in profits on Banco Santander's core lending activities across Brazil and Latin America as the bank announced its results for the first six months of 2013. In Brazil, net income interest was down by nearly 18 per cent to €5.52 billion, whilst in Latin America it dropped to €8.05 billion, a fall of 13 percent on results at the same point in 2012.

Financial Times, 31 July 2013

41. Santander is in talks with Funding Circle, the peer-to-peer online lending platform which connects savers and small businesses, in a potential deal that would see the bank lending capital to the company to increase lending to entrepreneurs. Such a move into the sector would be viewed as controversial, as peer-to-peer lending is seen as an alternative and quick way for small businesses to increase their capital away from mainstream banks.

Telegraph, 28 July 2013

42. Santander has joined the main lenders providing loans as part of the government's Help to Buy scheme. The Spanish-owned lender announced it is offering a range of mortgages intended for homebuyers who do not have a big deposit

Guardian.co.uk, 22 July 2013

43. Santander is to put an end to its "packaged" current accounts, where customers can pay up to £200 a year for add-ons like insurance and vouchers which many of them do not need nor want. The bank stopped selling packaged accounts over 12 months ago and is now moving its existing customers over to its non-fee paying current account from October this year.

Telegraph, 18 July 2013

44. Santander intends to float its American car loans arm, Santander Consumer USA, on the US stock market. The business could be valued at over \$8 billion (£5.3 billion).

Times, 6 July 2013

EUROPEAN GENERAL

45. In a sign that investor sentiment towards Europe is improving, the last 12 months have seen US money markets almost double their allocations to European banks. According to rating agency Fitch, 15 per cent of their \$652 billion in assets was allocated to Eurozone banks' short-term deposits and debt securities by the 10 largest US money market funds in the first half of 2013. The figures represent a 90 per cent increase on one year ago, when concerns over a break-up of the Eurozone were at their highest.

Financial Times, 30 July 2013

46. The EU is demanding that before a €3.9 billion state bailout is approved by Brussels, Monte dei Paschi di Siena should face tougher penalties. According to private correspondence seen by the Financial Times, Italy has been told that the 500 year-old bank's proposed restructuring plan is not hard enough on, amongst other things, cost cutting or executive pay.

Financial Times, 29 July 2013

47. There is considerable unease in the EU over demands from US regulators that they be given the right to examine emails, records and books at the headquarters of the largest financial groups in Europe. The recent US spying revelations have given a new significance to the behind-the-scenes disagreement over investigative powers to police complex markets, with concerns over US over-reach. As authorities on both sides of the Atlantic look to mark out their regulatory turf in enforcing new financial market rules, the access demands from regulators in the US will be a test of political will.

Financial Times, 24 July 2013

48. Analysis by the RBS has suggested that in order to ensure that Europe can withstand another financial crisis its banks need to dramatically shrink their balance sheets. According to the research at least €2.7 trillion in assets needs to be shed by 2016 to make Eurozone banks' balance sheets "sustainable".

Financial Times, 22 July 2013

49. The European Union has produced a draft plan that would see a cap placed on lucrative fees to process consumer credit and debit card transactions, which currently produce a significant revenue stream for banks. The proposals are a step back from an earlier draft which would have banned debit card fees entirely. The plan would be a blow for the payments industry, which has warned that consumers could see a rise in banking fees in response. The business model for both Visa and MasterCard would also be changed by the plan as it would require a legal separation between payment card schemes and the entities that process transactions.

Financial Times, 17 July 2013

50. In a breakthrough that gives more flexibility to the participants in the \$633 trillion market to trade where they wish without facing possible US sanctions, regulators in Europe and the US have reached agreement on policing derivatives. The agreed measures put the EU and US on a path towards recognising the other's rules as being essentially the same. The deal comes after a year of difficult negotiations which opened a rift inside the Commodity Futures Trading Commission.

Financial Times, 12 July 2013

51. The stage has been set for a battle over the next stage of Europe's banking union, after the European Commission was attacked by Germany for overstepping its legal powers when it proposed that it should become the top authority for winding up banks in the Eurozone. Senior officials in Germany flatly rejected all of the main elements of the blueprint that was unveiled in Brussels, from the creation of a €600 billion resolution fund to the centralisation of sweeping powers.

Financial Times, 11 July 2013

52. The Spanish government is being pressed by the country's banks to make a change that would allow the banks to reclassify billions of euros in deferred tax assets (DTAs), making their balance sheets appear far stronger under Basel III rules. Around €50 billion in DTAs has been accumulated by

Spanish banks. Officials and bankers in Madrid said the proposal was under review, whilst suggesting that there is broad support for it from the government.

Financial Times, 5 July 2013

53. In an unexpected outcome, the European Parliament has voted down a proposal that would have seen the EU bonus cap extended beyond banking to other areas in the financial sector.

Financial Times, 4 July 2013

54. Charges have been served by Brussels against 13 banks for allegedly conspiring to block exchanges challenging their business model, threatening the 20-year grip of investment banks on credit insurance markets. The formal charge sheet runs to nearly 400 pages and alleges that the banks colluded to ensure that insurance-like contracts stayed an "over the counter" product. The 13 banks, the International Swaps and Derivatives Association, and Markit, the main data handler for CDS, could be hit by fines of as much as 10 per cent of their global turnover if the European Commission decides to act on the charges.

Financial Times, 2 July 2013

INTERNATIONAL BANKING

BANK OF AMERICA

55. Bank of America has increased its net profit by 63 percent for the second quarter of 2013 compared to the same period in 2012, up to \$4 billion. Revenue was up by 3 percent to £22.9 billion. The bank's chief executive, Brian Moynihan, said: "We are doing more business with our customers and clients, and gaining momentum with every customer group we serve".

Times, 18 July 2013

BANK OF CHINA

56. For the first time since February, the Bank of China has injected £1.8 billion worth of liquidity into the Chinese financial system to avert a cash flow crisis. Until this point there had been a standoff between the Chinese Central Bank and commercial lenders within China over concerns that the banks were engaging in "shadow banking activities".

Telegraph.co.uk, 30 July 2013

BANK OF THAILAND

57. Bitcoins have been declared illegal in Thailand following an announcement by the central Bank of Thailand that they are not a currency. The statement came after Bitcoin had held a meeting with the Bank in an attempt to gain agreement to operate there.

Telegraph, 30 July 2013

CITIGROUP

58. Citigroup has posted a rise of 42% in second quarter earnings as the bank cut costs and profited from its growing international lending operations.

Guardian, 15 July 2013

GOLDMAN SACHS

59. Investing its own money and underwriting have seen Goldman Sachs double its quarterly profit, beating estimates from Wall Street. Net income for the second quarter of 2012 was \$962 million, whilst the figure for the same period in 2013 stood at \$1.93 billion.

Independent.co.uk, 19 July 2013

JP MORGAN

60. The role of lead adviser for the prospective sale of Lloyds Banking Group and RBS shares has been given to JP Morgan. UK Financial Investments has also put another 30 City banks on standby as potential advisers awaiting the decision to sell off the taxpayer's stake in the two part-nationalised banks.

Guardian, 20 July 2013

61. JP Morgan has released its second quarter results which show an increase in profits of over 30 percent to \$6.5 billion, whilst revenue grew by 13 per cent to \$26 billion. Jamie Dimon, the bank's chairman and chief executive, called the results a "strong performance".

Telegraph, 13 July 2013

LAZARDS

62. Archie Norman has been named by Lazard as the chairman of Lazard London. Mr Norman is known as the "turnaround king" for the early 1990s restructuring of supermarket chain Asda. The London post had been empty since Marcus Agius left to go to Barclays in 2006. Norman has worked

for the publicly listed investment bank for a decade as a senior advisor and his new part-time role will see him work closely with Lazard London's chief executive, William Rucker.

Financial Times, 10 July 2013

LEHMAN BROTHERS

63. Years of uncertainty for members of the Lehman Brothers and Nortel pension schemes have come to an end following a decision by the Supreme Court, which overturned a 2011 Court of Appeal judgment and ruled that the pension schemes have equal claims as other creditors on assets of the collapsed companies. The case is seen as a landmark one with implications for future insolvencies.

Times, 25 July 2013

MORGAN STANLEY

64. Second-quarter net income at Morgan Stanley nearly doubled to \$980 million. A jump in trading and investment banking activity saw revenues go up 22 per cent to \$8.5 billion in the three months to July, in comparison with the same period in 2012. The bank also announced that regulators have given it the go-ahead to buy back \$500 million of its shares.

Financial Times, 19 July 2013

INTERNATIONAL GENERAL

65. A new global Deloitte study has found that, despite a substantial increase in the amount spent on risk management, only incremental progress has been made by banks, insurers and asset managers on linking pay to risk and improving their information so that looming dangers can be spotted. Of the 86 financial institutions surveyed only 55 per cent of them included risk management in the compensation and performance goals of senior managers, a figure not that different to a similar survey from 2010.

Financial Times, 29 July 2013

66. The \$7 trillion plus repo market, where financial institutions borrow against government bonds, could be damaged or even destabilised as a result of new rules on bank funding, big banks in the United States have warned. New leverage ratio rules proposed recently by banking regulators around the globe could leave big banks in Europe, the US and Japan having to hold at least \$180

billion of additional regulatory capital to cover repo market borrowings, according to estimates from analysts at JPMorgan Chase.

Financial Times, 24 July 2013

67. A range of permits issued over the last decade for trading in physical commodities are being revisited by a US regulator, threatening the rise of Wall Street banks' as merchants of oil, coal, natural gas and industrial metals. Those familiar with the talks say that discussions have been held recently between bank executives and senior Federal Reserve officials over whether banks should be barred from owning physical commodity assets.

Financial Times, 22 July 2013

68. Following the recent introduction of two bipartisan Senate bills looking to introduce stronger regulations on banks, US Treasury secretary Jack Lew has reacted strongly to critics of the Dodd-Frank financial reforms. Dodd-Frank has already started changing the behaviour and business models of banks, according to Mr Lew, who also said that "members of Congress who want to alter financial reform before it is fully in place should carefully consider implementation efforts that are approaching completion."

Financial Times, 18 July 2013

69. The drive by US regulator Gary Gensler to discard survey-based interest rate benchmarks following the Libor scandal, has been opposed by global regulators who have instead adopted global standards which state that indices do not have to be based on transactions. Benchmark providers have been given 18 months by the International Organisation of Securities Commissions to comply with higher standards and governance.

Financial Times, 18 July 2013

70. Rating agency Moody's has revised its outlook for the Singapore banking sector downwards for the first time since 2008, due to loan growth and rising property prices in southeast Asia, giving a rare caution to the sector. The ratings for individual banks remained unchanged.

Financial Times, 16 July 2013

71. As it looks to improve the management of assets denominated in the currencies of the region, Swiss National Bank has become the first non-Asian central bank to open a branch in Singapore. The move highlights Singapore's growing importance as a base for asset and wealth managers.

Financial Times, 12 July 2013

72. Restrictions on borrowing which are nearly twice as demanding as rules set out under the Basel III global agreement, have been proposed by banking regulators in the United States in a move that moves them away from counterparts internationally. Under the proposals, the largest US bank holding companies would be required to hold regulatory capital corresponding to 5 per cent of their assets, 2 percentage points higher than the suggested Basel III minimum "leverage ratio".

Financial Times, 10 July 2013

73. After it resisted demands from Europe to include financial services regulation in transatlantic trade talks, the Obama administration has set itself on a collision course with Wall Street. The concern amongst politicians in Washington is that banks could use any kind of regulatory convergence framework as a way of getting round the Dodd-Frank law. The banks however believe that the administrations objections are misplaced, and agree with the EU's stance that a financial chapter would be an important part of any final deal.

Financial Times, 8 July 2013

74. Rising market interest rates have wiped out billions of dollars of paper profits for US banks in their securities portfolios. New data from the Federal Reserve has shown that the portfolios have seen unrealised gains drop from over \$40 billion at the start of the year to around \$6 billion.

Financial Times, 8 July 2013

75. Debuts on the Hong Kong stock exchange in 2013 or early 2014 that had been planned by a number of smaller Chinese commercial lenders have had to be postponed due to falling share prices, in a blow to banks in China. Mainland banks are prevented from raising funds in the equity markets at a price valuing the company at a price-to-book ratio of less than one by regulations on bank capital raising.

Financial Times, 1 July 2013

PRESS RELEASES

76. Super-complainants to strengthen the voice of financial consumers

The government has published the names of the first four consumer and business bodies to be considered for 'super-complainant' status in the financial services sector. The government is asking stakeholders to comment on the applications. Using the Financial Services Act 2012, the government has made it possible for consumer

bodies designated by the Treasury to make 'super-complaints' about financial services to the new regulator, the FCA.

HM Treasury, 31 July 2013

<https://www.gov.uk/government/news/super-complainants-to-strengthen-the-voice-of-financial-consumers>

77. BBA comment on the Home Affairs Select Committee report on E-crime and cyber security

The BBA has responded to the Home Affairs Select Committee report on E-crime and cyber security, noting that the banking industry is already working closely with Government and crime agencies to deal with the growing threat of cyber crime and expressing concern about the proposal to make it mandatory for businesses to report cyber attacks.

British Bankers' Association, 30 July 2013

<http://www.bba.org.uk/media/article/bba-comment-on-the-home-affairs-select-committee-report-on-e-crime-and-cybe/press-releases/>

78. Royal Bank of Scotland fined £5.6m for failing to properly report over a third of transactions

The Royal Bank of Scotland has been fined £5,620,300 by the Financial Conduct Authority for incorrectly reporting transactions they made in wholesale markets, and in some instances, failing to report transactions at all.

FCA 24 July 2013

<http://www.fca.org.uk/news/rbs-fined>

79. UK payment systems: how regulation of UK payment systems could enhance competition and innovation: part of the OFT's programme of work on retail banking

This Office of Fair Trading publication sets out and discusses recommendations on the regulation of payment systems in the UK. The publication includes sections on: payment systems; the rationale for regulation; payment systems and competition; competition and innovation in payment systems; regulation of payment card networks; and the approach to regulation.

Office of Fair Trading, 24 July 2013

http://www.oftr.gov.uk/shared_oftr/markets-work/OFT1498.pdf

80. Help to Buy mortgage guarantee scheme details set out by Chancellor

The Chancellor has issued details to lenders of the government's Help to Buy mortgage guarantee scheme, to enable them to start boosting high loan-to-value (LTV) lending by next January.

HM Treasury, 23 July 2013

<https://www.gov.uk/government/news/help-to-buy-mortgage-guarantee-scheme-details-set-out-by-chancellor>

81. Payments Council announces list of bank and building society brands participating in the new Current Account Switch Service

The Payments Council has announced the banks and building societies that will be participating in the new Current Account Switch Service from September 2013. The full list covers virtually 100 per cent of the current account marketplace. When the new service launches in September, all of these current account providers will use the Current Account Switch Guarantee, detailing the benefits of the service, and will display the accompanying Trustmark. Both have been designed to give consumers trust and confidence when switching current accounts.

Payments Council, 23 July 2013

http://www.paymentscouncil.org.uk/media_centre/press_releases/-/page/2649/

82. Code of conduct for the authentication of machine - dispensed banknotes

This publication from the Bank of England and the Payments Council sets out the final version of the code of conduct for the authentication of machine-dispensed banknotes. Under the code retailers and ATM deployers are required to enable machine-dispensed banknotes to be authenticated using a device tested by the bank.

Bank of England and Payments Council, 22 July 2013

http://www.paymentscouncil.org.uk/files/payments_council/cash/code_of_conduct_for_the_authentication_of_machine-dispensed_banknotes_v1_-_22_07_2013.pdf

83. Financial Services (Banking Reform) Bill (HL Bill 38 of 2013-14) - Lords Library Note

This Library Note gives a précis of the report stage and third reading of the Financial Services

(Banking Reform) Bill 2013, which looks to make a number of changes in the banking and financial services sector.

House of Lords Library, 19 July 2013

<http://www.parliament.uk/briefing-papers/LLN-2013-021.pdf>

84. Government publishes consultation on Banking Reform Bill secondary legislation.

The government has opened its consultation on the Banking Reform Bill secondary legislation. This is the latest step in the government's plan to create a stronger and safer banking sector. The Banking Reform Bill will fundamentally reform the structure of the UK banking sector making banks more resilient to shocks, easier to fix when they get into difficulty and reducing the severity of financial crises in the future.

HM Treasury 17 July 2013

<https://www.gov.uk/government/news/government-published-consultation-on-banking-reform-bill-secondary-legislation>

85. State aid: Commission adapts crisis rules for banks

The European Commission has adapted its temporary state aid rules for assessing public support to financial institutions during the crisis. The main changes are aimed at improving the restructuring process and the level playing field between banks. In particular, banks will be required to work out a sound plan for their restructuring or orderly winding down before they can receive recapitalisations or asset protection measures. Moreover, in case of capital shortfalls, bank owners and junior creditors will be required to contribute as a first resort, before banks can ask for public funding.

European Commission, 10 July 2013

http://europa.eu/rapid/press-release_IP-13-672_en.htm

86. BBA to hand over administration of LIBOR to NYSE Euronext Rate Administration Limited

The British Bankers' Association's board has voted unanimously to approve the transfer of the administration of LIBOR to NYSE Euronext Rates Administration Limited, the bidder recommended by the Hogg Tendering Advisory Committee. The BBA will hand over administration of the benchmark following FCA approval. The BBA will be engaging constructively with the new

administrator over the coming months to ensure that there is a smooth transition ahead of the expected completion in early 2014.

British Bankers' Association, 9 July 2013

<http://www.bba.org.uk/media/article/bba-to-hand-over-administration-of-libor-to-nyse-euronext-rate-administrati/press-releases/>

87. PRA and FCA welcome Internal Audit guidance

The regulatory authorities welcome the publication, by the Chartered Institute of Internal Auditors, of the guidance "Effective Internal Audit in the Financial Services Sector". The regulators believe that implementation of the recommendations within the guidance will enhance the effectiveness of internal audit functions and the impact and influence they have within their organisations. In exercising their supervisory judgement, the regulators will consider the nature and extent of compliance with the guidance in any assessment of internal audit effectiveness within regulated firms.

PRA 8 July 2013

<http://www.bankofengland.co.uk/publications/Pages/news/2013/087.aspx>

88. The Government's response to the Parliamentary Commission on Banking Standards

On 19 June 2013, the Parliamentary Commission on Banking Standards published its final report, Changing banking for good. This is a landmark report that will have a profound impact in raising standards across the banking industry. The Government strongly endorses the principal findings of the report and intends to implement its main recommendations. In this response to the Commission's report, the Government is setting out its initial views on the major recommendations of the report. The Government indicates where it can move quickly to implement recommendations and which of those recommendations require further detailed work to ensure effective implementation. On those few recommendations where the Government disagrees with the Commission, the Government sets out its reasoning and explains how it intends to achieve the goals of the Commission through other means.

HM Treasury & BIS, 8 July 2013

<http://www.official-documents.gov.uk/document/cm86/8661/8661.pdf>

89. Bank levy review 2013: consultation document

This consultation reviews the design of the bank levy to ensure it is operating efficiently. The overarching objectives of raising £2½ billion per annum and encouraging banks to move to safer and more stable funding remain unchanged and will not form part of the consultation. Comment by 26 September 2013.

HM Revenue & Customs and HM Treasury, 4 July 2013

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210738/130704_Bank_Levy_Review_Consultation_Document.pdf

90. Bank of England maintains Bank Rate at 0.5% and the size of the Asset Purchase Programme at £375 billion

The Bank of England's Monetary Policy Committee has voted to maintain the official Bank Rate paid on commercial bank reserves at 0.5%. The Committee also voted to maintain the stock of asset purchases financed by the issuance of central bank reserves at £375 billion.

Bank of England, 4 July 2013

<http://www.bankofengland.co.uk/publications/Pages/news/2013/007.aspx>

91. Global systemically important banks: updated assessment methodology and the higher loss absorbency requirement

This document updates and replaces the November 2011 publication Global systemically important banks: assessment methodology and the additional loss absorbency requirement. The changes reflect the lessons learnt from applying the assessment methodology using data submitted by banks in respect of their positions as at the financial year-ends 2009 to 2011. The changes also include the addition of the disclosures that banks are required to make to ensure that the assessment methodology operates on the basis of publicly available information.

Bank for International Settlements, 4 July 2013

<http://www.bis.org/publ/bcbs255.pdf>

CASE LAW

92. Contractual right to draw down loan not an “asset” for the purposes of freezing injunction

This case concerned the scope of the standard Commercial Court freezing order which prohibits a defendant from disposing, dealing or diminishing the value of his assets. In particular it looked at whether a contractual right to draw down under an unsecured loan facility would qualify as an "asset" for these purposes and, if so, whether exercising that right would amount to "disposing of" or "dealing with" an asset.

JSC BTA Bank ("**Bank**") had obtained a freezing injunction against Mukhtar Ablyazov ("**A**") which prevented him from in any way disposing of, dealing with or diminishing the value of his assets. The injunction provided that his assets included any asset which he had power, directly or indirectly, to dispose of, or deal with as if it were his own.

After the freezing order had been obtained, A entered into four loan facility agreements with two offshore companies ("**W** and **F**") which allowed him to borrow a total of £40m. The agreements enabled W and F to make payments directly to third parties. The entire £40m was drawn down and paid directly by W and F to third parties to fund the legal expenses of A and others and A's living expenses.

The Bank applied for a declaration that A's rights under the loan agreements were "assets" for the purposes of the freezing order and that any drawings could only be made in accordance with the provisions of the order.

The Bank's application was dismissed. The High Court ruled that the rights to draw down under the loan agreements were not "assets" for the purpose of the standard form freezing order and that directing W and F to make payments did not constitute "disposing or dealing with an asset".

The Bank appealed to the Court of Appeal which upheld the first instance decision.

Beatson LJ delivered the leading judgment. He concluded that there was no fundamental objection in principle to including rights such as those under the loan agreements within the scope of a freezing order. A's right to draw down under the loan agreements could be characterized as a "chose in action". As a matter of law a chose in action is an "asset" for many purposes. The issue

was whether the terms of the freezing order used in this case included "choses in action" as "assets".

In construing such an order, the words used have to be given their ordinary meaning. The background, context and purpose of the order are also relevant in determining that meaning. Freezing orders should be strictly construed. As with any order with a penal sanction for breach, such orders must set out clearly what the defendant must do or not do.

Beatson LJ tried to ascertain the meaning and scope of the order by reference to the understanding of an ordinary and reasonable businessperson, who would usually be the target recipient of such documents, and of the third parties who would be served with such documents, rather than by reference to the understanding of an individual with particular attributes.

He agreed with the first instance judge that a man who is entitled to borrow and does so "is not ordinarily to be described as disposing of or dealing with an asset". He also agreed that, whilst a court construing a legal document needs to have regard to legal meaning where technical legal terminology is used, terms like "assets", "dispose of", "deal with", and "diminish the value of" are not specifically legal terminology.

Bearing in mind the need to construe freezing orders strictly, it was noted that the term "choses in action" was not used in the order and, as the first instance judge had stated, the terms "dispose of" and "deal with" suggested some form of transfer or agreement to transfer. The terms used did not naturally convey the exercise of a right to borrow by receiving or causing a third party to receive money in exchange for the generation of a debt. The wording used in the order did not identify all "choses in action" as falling within the scope of the term "asset" with as much precision as was reasonably practicable.

This conclusion was fortified by previous first instance authorities which held that a right to borrow under a loan agreement does not constitute an "asset" for the purpose of the standard Commercial Court form of freezing order.

Whilst it is open to a claimant to include all choses in action within the ambit of the term "asset", clear and unequivocal language must be used. The principle that freezing orders must be

construed strictly means that a claimant, who has control of the form of the order when he seeks it, cannot rely on the court giving the terms of the order a broad meaning unless clear and unequivocal language is used.

JSC BTA Bank v Mukhtar Ablyazov, Court of Appeal, 25 July 2013

93. Serious Fraud Office can disclose documents obtained from third parties under s.2 of the Criminal Justice Act 1987 without their consent

Under s.2 of the Criminal Justice Act ("CJA") the Serious Fraud Office ("SFO") can require individuals and organisations to produce documents relevant to its investigations. The obligation to produce such documents is compulsory and failure to comply could result in prosecution. This case looked at the issue as to whether the SFO then has the power to disclose such documents in subsequent civil proceedings.

The SFO had carried out investigations into the business interests of Robert Tchenguiz and Vincent Tchenguiz. As part of those investigations, the SFO had gathered material from third parties (including a number of banks) using its powers under s.2 of the CJA.

The Tchenguiz brothers subsequently brought proceedings against the SFO alleging that the effect of the investigations, searches, arrests and surrounding publicity had had a disastrous effect on their business interests and caused them extensive financial losses and reputational harm. In the context of those proceedings the SFO was ordered to give disclosure. The issue arose as to whether it should disclose the material provided by the third parties. Some of the third parties objected to disclosure being given without their consent so the SFO sought a declaration from the court.

The issue was limited to whether the terms of the CJA in effect prohibit the SFO from giving disclosure.

It was common ground that the SFO owed a duty of confidence in respect of the information it received pursuant to its statutory powers but that that duty could be overridden in limited circumstances set out in the CJA so that the SFO could voluntarily give disclosure of documents to certain third parties. However none of those limited circumstances applied here, so the SFO did not have the power to voluntarily give disclosure. It was however also

accepted that confidence alone is not a basis for refusing to give disclosure in civil litigation.

The court rejected an argument that the CJA contains an implied restriction which effectively overrides any obligation to provide disclosure. The CJA contains no express prohibition and an implied restriction was not necessary, obvious or proper. The existence of an absolute bar would be too restrictive and it was extraordinarily difficult to see how such an absolute bar would be formulated within the context of the existing statutory wording.

Although there was no direct authority as such, the authorities pointed against an absolute bar and suggested that the duty of confidence which existed in such circumstances was subject to any order of the court.

Other statutory provisions such as s.19(2) of the Anti-Terrorism, Crime and Security Act 2001, s.82 of the Banking Act 1987 and s.348 of the Financial Services and Markets Act 2000 do contain express prohibitions against disclosure but the CJA does not. The absence of an express prohibition in the CJA was important.

Although the coercive powers to obtain documentation under the CJA are conferred for specific public purposes set out in the CJA and are strictly limited, this did not justify the implication of an absolute bar.

The court made a declaration that the SFO was not prevented by the provisions of the CJA from giving disclosure of the documents received from third parties in response to notices under s.2 of the CJA and from permitting inspection of such documents. The court did not consider whether the documents might be subject to any other statutory bar on disclosure (eg under the Official Secrets Act) or to privilege.

Robert Tchenguiz and Anor v Director of the Serious Fraud Office : Rawlinson & Hunter Trustees SA and Ors v Director of the Serious Fraud Office and Anor, Queen's Bench Division, 18 July 2013

94. Italian public authority fails to set aside default judgments and summary judgment is entered

Intesa Sanpaolo S.p.A. and Dexia Crediop S.p.A (together the "Banks") entered into three derivative transactions with an Italian Public authority, Regione Piemonte ("Piedmont"), in

connection with Piedmont's issuance of two bonds. The transactions were entered into by Piedmont pursuant to a resolution made by the Piedmont Regional Council dated 2 August 2006. The transactions were performed by both sides without incident until 2011.

At some point in 2010, a body with oversight over Piedmont's financial affairs produced a report calling for investigation of the transactions and their terms. This resulted in a report from an Italian lawyer which alleged that the Banks had made "very substantial secret profits" from the transactions.

In August 2011 the Banks issued proceedings in the Commercial Court in London (the "Declaratory Proceedings") seeking declarations regarding the validity of the transactions and the legal nature of their relationships with Piedmont. Piedmont did not file any acknowledgement of service or otherwise engage in these proceedings.

In January 2012 Piedmont Regional Council passed a resolution which purportedly cancelled the earlier resolution dated 2 August 2006. Piedmont then issued its own proceedings in Italy effectively as a means of getting the transactions declared void.

The Banks obtained judgment in default in the Declaratory Proceedings in July 2012. The court declared that Piedmont's obligations under the transactions were legal, valid and binding obligations, enforceable in accordance with their terms.

The Banks continued to perform their obligations under the transactions but claimed that Piedmont continued to fail to meet its obligations and that there were substantial sums due from Piedmont. The Banks brought new proceedings in February 2013 (the "Money Actions") seeking payment of the sums they claimed were due.

Piedmont applied to set the default judgment aside and the Banks applied for summary judgment in the Money Actions.

Piedmont argued that, although it was still not in a position to serve a defence to the Declaratory Proceedings, the default judgment should be set aside because there were various issues which needed to be determined at trial. It also argued that the Banks should not be granted summary judgment in the Money Actions as they had failed to serve evidence explaining how the sums were claimed and because Piedmont had counterclaims against the Banks which it wanted to pursue.

The court ruled that Piedmont's delay of over nine months in applying to set aside the default judgment was sufficient in itself to refuse Piedmont's application to set judgment aside. Piedmont had deliberately chosen to ignore proceedings duly instituted and properly served and did so at its peril, particularly in circumstances where the parties had expressly agreed that English law and jurisdiction was to govern their relationship. The Banks were entitled to rely on the default judgment which, absent any appeal, was final and binding. They had continued to perform their obligations under the transactions and could not be criticized for issuing the Money Actions. In any event, Piedmont had no real prospect of successfully defending the Declaratory Proceedings and there was no other good reason for setting the default judgment aside.

There was no good reason why summary judgment should not be granted in the Money Actions.

The Banks were entitled to summary judgment and Piedmont's applications to set aside were refused.

Intesa Sanpaolo S.p.A v Regione Piemonte and Dexia Crediop S.p.A v Regione Piemonte, Commercial Court, 16 July 2013

95. Subrogation claim succeeds even though lender released security rather than advanced funds

This case looked at the law of unjust enrichment and in particular when court can grant the remedy of subrogation to reverse the effect of unjust enrichment.

Mr and Mrs Menelaou were indebted to Bank of Cyprus UK Limited ("Bank") to the tune of £2.2m. Their indebtedness was secured by two legal charges over their home, Rush Green Hall. They decided to sell Rush Green Hall and purchase a smaller property. A purchaser was found for Rush Green Hall but he was only prepared to pay £1.9m which was not enough to discharge their indebtedness.

They decided to purchase a new property, Great Oak Court, in their daughter Melissa's name for £875,000. Contracts were exchanged and a deposit was paid out of the larger deposit they had received from the purchaser of Rush Green Hall.

The Bank was approached about these arrangements. After some debate it agreed that it would release its charges over Rush Green Hall if the Menelaous repaid £750,000 of their indebtedness on completion and a new charge was granted over Great Oak Court.

The solicitors purported to obtain a charge over Great Oak Court signed by Melissa. On completion of the sale and purchase the Menelaous' solicitors sent £750,000 to the Bank and £785,000 to the vendor of Great Oak Court to meet the balance of the purchase price. They also sent the Bank the forms for releasing the charges on Rush Green Hall which the Bank returned about a month later.

Melissa later claimed that she had not signed the charge. She started proceedings to get the charge removed from the property register. The Bank counterclaimed, seeking a declaration that it was entitled to an equitable charge over Great Oak Court arising as a result of subrogation.

The Bank's counterclaim failed on the basis that the Bank had not provided the money for the purchase of Great Oak Court nor had the money so used belonged to the Bank so there had been no "transfer of value" between the Bank and Melissa. The charges over Rush Green Hall still remained in place when the proceeds from the sale of Rush Green Hall were used to purchase Great Oak Court.

The Bank appealed.

The Court of Appeal was satisfied that the Bank had not been able to pull out of its agreement to release its charges subject to getting a new charge in Melissa's name and that it was therefore wrong to attach any significance to the fact that the charges were not released until a month after completion. The "transfer of value" started with the agreement by the Bank to give up its interest in Rush Green Hall. That agreement released the funds to pay for Great Oak Court. The fact that the charges remained in place whilst the Bank signed the forms was not significant.

There was a sufficiently close causal connection between the Bank's agreement to part with its interest in Rush Green Hall and the enrichment of Melissa to hold that Melissa was enriched at the Bank's expense.

The unusual feature of this case was that the Bank provided "a transfer of value" by agreeing to **release a security interest** rather than by **advancing specific funds**. Although no case was cited to the court which demonstrated that a lender was entitled to a remedy of subrogation in those circumstances,

the court was satisfied that when the Bank gave its undertaking to release its charges on Rush Green Hall (and thus release the purchase monies for the purchase of Great Oak Court) there was a "transfer of value" from the Bank to Melissa. The Bank was "the provider of the money used to discharge the debt". As a matter of economic reality the Bank was the source of the money used. There was therefore no reason in principle or justice as to why the Bank should not be entitled to the remedy of subrogation.

Melissa Menelaou v Bank of Cyprus UK Limited, Court of Appeal, 2 July 2013

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LEEDS: HUGH EVANS

T 0113 369 2200

E hugh.evans@dlapiper.com

LONDON: JEAN-PIERRE DOUGLAS-HENRY

T 020 7153 7373

E jp.douglashenry@dlapiper.com

MANCHESTER: STEWART PLANT

T 0161 235 4544

E stewart.plant@dlapiper.com

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