

## 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 Provides Time-Limited No-Action Relief to Certain Affiliated Counterparties

On 6 March 2014, the Commodity Futures Trading Commission (“CFTC”) Divisions of Clearing and Risk (“DCR”) and Market Oversight (“DMO”) provided time-limited no-action relief to certain affiliated counterparties. The DCR issued a no-action letter extending the time-limitation contained in the alternative compliance frameworks available to certain affiliated counterparties pursuant to CFTC regulation 50.52(b)(4)(ii)-(iii). The DMO issued a no-action letter providing time-limited no-action relief from the requirements of the trade execution requirement in Commodity Exchange Act (“CEA”) section 2(h)(8) to “Eligible Affiliate Counterparties,” as defined in CFTC regulation 50.52(a), that engage in swap transactions with one another that involve a swap subject to the trade execution requirement.

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

<http://www.cftc.gov/ucm/groups/public/@llettergeneral/documents/letter/14-25.pdf>.

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

<http://www.cftc.gov/ucm/groups/public/@newsroom/documents/letter/14-26.pdf>.

#### CFTC, FERC Implement Information Sharing MOU

On 5 March 2014, the CFTC Acting Chairman Mark Wetjen and Federal Energy Regulatory Commission (“FERC”) Acting Chairman Cheryl LaFleur announced the initial transmission of market data under the recently adopted CFTC-FERC Memorandum of Understanding (“MOU”) for use in analyzing market activities and protecting market integrity.

Wetjen and LaFleur also announced the creation of a staff-level Interagency Surveillance and Data Analytics Working Group to coordinate information

sharing between the agencies and focus on data security, data sharing infrastructure, and the use of analytical tools for regulatory purposes.

As directed by Congress under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), the CFTC and FERC entered into an MOU on 2 January 2014 to share information for use in analyzing market activities and protecting market integrity. The MOU ensures that information requests related to markets within the respective jurisdiction of each agency are properly coordinated to minimize duplicative information requests and to address the treatment of confidential information.

## Compensation

### European Commission Adopts RTS on Bonus Caps

The European Commission has adopted Regulatory Technical Standards (“RTS”) on criteria to identify categories of staff whose professional activities have a material impact on an institution’s risk profile. In broad terms, staff will be identified as having a material impact on an institution’s risk profile if certain qualitative and quantitative criteria are met. The qualitative criteria are designed to identify members of senior management and risk-takers that are in control functions. The quantitative criteria and thresholds relate to total gross remuneration awarded to staff members and specify criteria for identifying staff members whose total remuneration takes them into the same remuneration bracket as members of senior management and risk-takers. The Regulation will come into force on the twentieth day following publication in the Official Journal of the European Union (i.e. once translated into all official languages of the European Union and then published in the Official Journal of the European Union).

The text of the regulation is available at:

[http://ec.europa.eu/internal\\_market/company/docs/modern/140304-regulatory-technical-standards\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/modern/140304-regulatory-technical-standards_en.pdf).

### Letter from BoE to Treasury Committee Published Providing Information on the PRA's Remuneration Code and UK Banks' Exposures to China

The Treasury Committee published, on 4 March 2014, a letter from Mark Carney, Governor of the Bank of England ("BoE") to Andrew Tyrie, Treasury Committee Chairman setting out a timetable for the PRA's response to the Parliamentary Commission on Banking Standards' ("PCBS") recommendations on claw back and other aspects of the Remuneration Code. The letter states that the PRA plans to consult in August 2014 on the implementation of a revised Remuneration Code in light of the PCBS recommendations on remuneration, to coincide with the PRA's consultation on the implementation of new legislation with regards to accountability and standards for bank employees.

The letter is available at:

<http://www.parliament.uk/documents/commons-committees/treasury/140130%20-%20M.pdf!docid=1769590!.pdf>.

## Regulatory Capital

### Report on Impact of Differences in Leverage Ratio Definitions

The European Banking Authority ("EBA") published its "Report on impact of differences in leverage ratio definitions: Leverage ratio exposure measure under Basel III and the CRR" on 4 March 2014. The report provides a policy analysis and quantitative assessment of the impact that would arise from aligning the current Capital Requirements Regulation ("CRR") definitions of the leverage ratio's exposure measure to the revised standard published by the Basel Committee on Banking Supervision ("the Basel Committee") on 12 January 2014 ("Basel III"). The report was produced to provide recommendations to the European Commission in view of its forthcoming delegated act on the definitions of leverage ratio.

The EBA report is available at:

<http://www.eba.europa.eu/documents/10180/534414/EBA+-+Leverage+ratio+analytical+report.pdf>.

### ESRB Publishes Handbook on Macro-Prudential Policy in the Banking Sector

The European Systemic Risk Board ("ESRB") published the "ESRB Handbook on Operationalising Macro-prudential Policy in the Banking Sector" on 3 March 2014. The handbook is accompanied by the "Flagship Report on Macro-prudential Policy in the Banking Sector." The handbook reviews the full range of new policy instruments established under the Capital Requirements Directive ("CRD") and the Capital Requirements Regulation ("CRR"), together entitled the Capital Requirements Directive IV ("CRD IV"), and addresses the central issues applicable across the individual instruments. Its objective is to assist macro-prudential authorities in the EU to use these new instruments in order to help member states mitigate systemic risk in the banking sector. The flagship report provides an overview of the new EU macro-prudential policy framework

and is aimed at high-level policy makers. Mario Draghi, ESRB Chair, discusses these publications in an introductory statement which is available at:

<http://www.esrb.europa.eu/news/pr/2014/html/is140303.en.html>.

The handbook is available at:

[http://www.esrb.europa.eu/pub/pdf/other/140303\\_esrb\\_handbook.pdf?d2c5e7a6f89a9c4ffb5d184fb30b000](http://www.esrb.europa.eu/pub/pdf/other/140303_esrb_handbook.pdf?d2c5e7a6f89a9c4ffb5d184fb30b000).

The report is available at:

[http://www.esrb.europa.eu/pub/pdf/other/140303\\_flagship\\_report.pdf?b316a98baf69a471d65ccac85826a09e](http://www.esrb.europa.eu/pub/pdf/other/140303_flagship_report.pdf?b316a98baf69a471d65ccac85826a09e).

#### EBA Publishes Additional Annexes for Draft Implementing Technical Standards on Supervisory Reporting (Forbearance and Non-Performing Exposures)

The EBA has published Annexes III (definitions), III (dictionary) and IV (validation formulae) of the Draft Implementing Technical Standards (“ITS”) on Supervisory Reporting (forbearance and non-performing exposures) under the CRR. The ITS aim to implement uniform definitions and reporting requirements for forbearance and non-performing exposures. The final ITS will be adopted by the European Commission as directly applicable EU Regulations.

The final draft ITS is available at:

<https://www.eba.europa.eu/documents/10180/449824/EBA-ITS-2013-03+Final+draft+ITS+on+Forbearance+and+Non-performing+exposures.pdf>.

#### EBA and BCBS Publish Reports on Basel III Monitoring Exercise

The EBA published on 6 March 2014 its fifth report of the Basel III monitoring exercise on the European banking system. The exercise runs alongside the one conducted by the Basel Committee at a global level. The Basel Committee also published its own report on the matter on the same day.

The EBA report is available at:

[http://www.eba.europa.eu/documents/10180/534414/Basel+III+Monitoring+Exercise+Report+\(as+of+30+June+2013\).pdf](http://www.eba.europa.eu/documents/10180/534414/Basel+III+Monitoring+Exercise+Report+(as+of+30+June+2013).pdf).

The Basel Committee report is available at:

<https://www.bis.org/publ/bcbs278.pdf>.

#### PRA Publishes OCP Proposing Amendments to PRA Rules, Guidance and Supervisory Statement

The Prudential Regulation Authority (“PRA”) issued on 4 March 2014 an occasional consultation paper (“OCP”) proposing miscellaneous and minor amendments to some of its rules and guidance, and to its supervisory statement.

The OCP deals with:

1. Financial Conglomerates Capital Adequacy;
2. Supervisory statement on the internal capital adequacy assessment process and the supervisory review and evaluation process;

3. Shari'ah-compliant liquid assets; and
4. Risk management of asset encumbrance.

The deadline for responses to the consultation is 15 April 2014.

The OCP is available at:

<http://www.bankofengland.co.uk/pr/ Documents/publications/policy/2014/ocp5-14.pdf>.

#### Federal Agencies Issue Final Dodd-Frank Act Stress Test Guidance for Medium-Sized Firms

On 5 March 2014, the Board of Governors of the Federal Reserve System (“Federal Reserve Board”), the Federal Deposit Insurance Corporation (“FDIC”), and the Office of the Comptroller of the Currency (“OCC”) issued final guidance describing supervisory expectations for stress tests conducted by financial companies with total consolidated assets between \$10 billion and \$50 billion. These medium-sized companies are required to conduct annual stress tests under rules issued by the agencies in October 2012 to implement a provision in the Dodd-Frank Act. These companies are required to perform their first stress tests under the Dodd-Frank Act by 31 March 2014.

The full text of the final guidance is available at:

<http://www.fdic.gov/news/news/press/2014/pr14019a.pdf>.

#### OCC Issues an Interim Final Rule Amending Regulations According to Basel III Capital Framework

On 7 March 2014, the OCC issued an interim final rule with request for comments that makes technical and conforming amendments to its regulations governing national banks and federal savings associations. The final rule, which is effective as of 31 March 2014, amends various regulations in order to make those regulations consistent with the recently adopted Basel III capital framework.

The full text of the interim final rule is available at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-02-28/pdf/2014-04331.pdf>.

## Financial Market Infrastructure

#### FCA Publishes Outcome of Risk Mitigation Review in Relation to Financial Incentives

The Financial Conduct Authority (“FCA”) has published the outcome of its risk mitigation review in relation to financial incentives entitled “Risks to customers from financial incentives – an update.” In its review, the FCA states that although considerable progress has been made by the major banking groups, there are areas in which more needs to be done.

The report is available at:

<http://www.fca.org.uk/your-fca/documents/thematic-reviews/tr14-04>.

#### FCA Review Progress on Preparation for New Platform Rules

The FCA have carried out a thematic review to assess how platforms have been preparing for the implementation of the FCA platform rules which come into force on 6 April 2014. Generally the FCA found that platforms are well prepared for the implementation of the rules and platforms have put in a significant amount of effort to understand how the changes will impact consumers, as well as their own business models.

A video highlighting the FCA's findings is available at:

<http://www.fca.org.uk/news/review-of-implementation-of-platform-rules>.

A presentation used during the FCA platform workshops is available at:

<http://www.fca.org.uk/your-fca/documents/thematic-reviews/implementing-the-platform-rules-progress-and-considerations>.

#### FCA Call for Input on New Payment Systems Regulator

The FCA is calling for stakeholder input on the UK payments industry, in particular on issues of competition, access, governance, ownership and innovation. The FCA is gathering views on payment systems in order to help the new payment systems regulator develop its regulatory approach. The new regulator, required under the Financial Services (Banking Reform) Act 2013, will be incorporated as a subsidiary of the FCA by April 2014 and will be fully operational in April 2015.

The responses are to be submitted by 15 April 2014.

The paper is available at:

<http://www.fca.org.uk/static/documents/psr-call-for-inputs.pdf>.

The press release is available at:

<http://www.fca.org.uk/news/payment-systems-industry-new-regulator>.

#### SEC Launches Enforcement Cooperation Initiative for Municipal Issuers and Underwriters

On 10 March 2014, the Securities and Exchange Commission ("SEC") announced a new cooperation initiative out of the SEC Enforcement Division to encourage issuers and underwriters of municipal securities to self-report certain violations of the federal securities laws rather than wait for their violations to be detected.

Under the Municipalities Continuing Disclosure Cooperation ("MCDC") Initiative, the Enforcement Division will recommend standardized, favorable settlement terms to municipal issuers and underwriters who self-report that they have made inaccurate statements in bond offerings about their prior compliance with continuing disclosure obligations specified in Rule 15c2-12 under the Securities Exchange Act of 1934. Eligibility for the MCDC Initiative is explained in a detailed announcement by the Enforcement Division. Issuers and underwriters must self-report by completing a questionnaire and submitting it via e-mail or by fax or mail no later than 10 September 2014.

The full text of the SEC Enforcement Division announcement is available at:  
<http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml>.

A copy of the MCDC Initiative Questionnaire for Self-reporting is available at:  
<http://www.sec.gov/divisions/enforce/mcdc-initiative-questionnaire.pdf>.

## Funds

### FCA Publish Quarterly Consultation Paper

On the 6 March 2014, the FCA published a quarterly consultation paper which proposes changes to:

1. AIFMs, UCITS managers and certain AIF depositaries;
2. the complaints data reporting form and updating guidance (minor changes);
3. the scope of mortgage Product Sales Data performance data reporting for firms who own regulated mortgage contracts but who do not have the 'entering into' permission; and
4. the Handbook to implement the Financial Policy Committee's recommendation on interest rate stress tests for mortgages.

The consultation closes on 6 May 2014.

This Quarterly consultation is available at:  
<http://www.fca.org.uk/static/documents/consultation-papers/cp14-04.pdf>.

## Enforcement

### FCA Publishes Warning Notice Statements

The FCA published two Warning Notice Statements on 3 March 2014 relating to warning notices issued in January 2014 to individuals, in each case concerning failings in relation to an interest rate benchmark. The FCA has already published two warning notices (both on 3 February 2014) on the same issue.

The warning notices are available at:  
<http://www.fca.org.uk/your-fca/list?ttypes=Warning+notice+statements&yyear=&ssearch>.

### Bank of England to Order an External Report into Forex Manipulation

Following the Bank of England's (the "Bank") internal review into allegations over manipulation of the foreign exchange market, the Bank's Oversight Committee has commissioned an independent report which will assess whether Bank officials were involved in or aware of attempted or actual manipulation. The Bank's internal report found no evidence of staff involvement in market manipulation; however one member of staff has been suspended in line with internal control processes.

The press release is available at:

<http://www.bankofengland.co.uk/publications/Pages/news/2014/044.aspx>.

#### SEC Announces Largest Monetary Sanction for Rule 105 Short Selling Violations

On 5 March 2014, the SEC announced the largest-ever monetary sanction for Rule 105 short selling violations as a Long Island-based proprietary trading firm and its owner agreed to pay \$7.2 million to settle charges. According to the SEC's order, Jeffrey W. Lynn created Worldwide Capital for the purpose of investing and trading his own money. Lynn's principal investment strategy focused primarily on new shares of public issuers coming to market through secondary and follow-on public offerings. Through traders he engaged to trade on his behalf, Lynn sought allocations of additional shares soon to be publicly offered, usually at a discount to the market price of the company's already publicly trading shares. He and his traders would then sell those shares short in advance of the offerings. Lynn and Worldwide Capital improperly profited from the difference between the price paid to acquire the offered shares and the market price on the date of the offering.

The full text of the SEC order is available at:

<http://www.sec.gov/litigation/admin/2014/34-71653.pdf>.

## Events

#### CFTC Staff to Host Public Roundtable to Discuss Dodd-Frank End-User Issues

On 5 March 2014, the CFTC announced that CFTC staff will hold a public roundtable on 3 April 2014 to discuss issues concerning end-users and the Dodd-Frank Act. The roundtable will consist of three panels, discussing: 1) the obligations of end-users under Regulation 1.35 concerning recordkeeping for commodity interest and related cash or forward transactions; 2) the appropriate regulatory treatment of forward contracts with embedded volumetric optionality; and 3) the appropriate regulatory treatment for purposes of the \$25 million (special entity) de minimis threshold for swap dealing to government-owned electric utilities. The roundtable will be held in the Conference Center at CFTC's headquarters at Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC. The time of the meeting, call-in numbers and agenda will be forthcoming.

#### US Bank Regulatory Agencies and CDFI Fund to Sponsor National Interagency Community Reinvestment Conference

On 7 March 2014, the US federal bank regulatory agencies, the Federal Reserve Bank of San Francisco, the Federal Reserve Bank of Chicago, and the Community Development Financial Institutions ("CDFI") Fund announced that they will host the 2014 National Interagency Community Reinvestment Conference in Chicago from 30 March to 2 April.

This biennial conference offers participants from around the country the opportunity to learn about the Community Reinvestment Act ("CRA") and its regulations, as well as the chance to network with colleagues and discuss best practices and emerging challenges in community development. The conference



agenda includes keynote presentations by Janet Yellen, Chair of the Federal Reserve Board, Martin J. Gruenberg, Chairman of the FDIC, and Thomas J. Curry, Comptroller of the Currency.

For the full agenda brochure and to register for the conference online, please visit:

<http://www.frbsf.org/community-development/events/2014/march/national-interagency-community-reinvestment-conference-chicago/>.

## Hearings

11 March 2014: US Senate Committee on Banking, Housing and Urban Affairs hearing entitled “Finding the Right Capital Regulations for Insurers”.

12 March 2014: US House of Representatives Committee on Financial Services hearing entitled “Federal Reserve Oversight: Examining the Central Bank’s Role in Credit Allocation”.

## People

### The ECB Appoints Three New Representatives to the SSM Board

Three European Central Bank representatives (“ECB”) (Sirikka Hämäläinen, Julie Dickson and Ignazio Angeloni) have been appointed to the Supervisory Board of the Single Supervisory Mechanism. The Supervisory Board is undertaking the necessary preparatory work to ensure the ECB is ready to assume the role as the regulator for the largest euro-area banks in November 2014.

The press release is available at:

<http://www.ecb.europa.eu/press/pr/date/2014/html/pr140307.en.html>.

### Nick Prettejohn Steps Down from PRA Board

On 6 March 2014, Nick Prettejohn stepped down from the Prudential Regulation Authority (PRA) Board with immediate effect in order to pursue a future outside of regulation. The PRA Board has announced that it will begin searching for a replacement immediately.

The Press release is available at:

<http://www.bankofengland.co.uk/publications/Pages/news/2014/045.aspx>.

**David M. Cote Elected as a Class B Director to New York Fed's Board of Directors**

On 7 March 2014, the Federal Reserve Bank of New York announced that David Cote, Chairman and Chief Executive Officer of Honeywell International, has been elected to serve as a Class B director. Mr. Cote was elected by members of Group 2, a classification for banks with capital and surplus of \$30 million to \$1 billion, to represent the public. His term ends December 31, 2016.

The press release is available at:

<http://www.newyorkfed.org/newsevents/news/aboutthefed/2014/oa140307.html>.

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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