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RULE BOOK

Insider-Trading Suspects to Face FSA Charge

Seven people arrested by the U.K.'s financial regulator as part of its highest-profile insider-trading investigation may learn next month whether they'll be charged.

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Banks Prepare to Implement Volcker Rule

Michael Greenberger, University of Maryland Law professor, says that not enough attention has been paid to arguments that the Volcker rule is too weak.

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Broker-Dealers Liable for Third Parties: Finra

Broker-dealers that hire third-party vendors would have supervisory responsibility, and ultimately liability, for their activities under a draft Finra rule.

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Swap Rule to Increase Costs, Competition

The Dodd-Frank swap push-out rule may increase swap costs for U.S. commercial banks and bring more competition from foreign banks, a Bloomberg Government analysis has found. The rule may also introduce more risk into the financial system.

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Roel Campos, a former SEC commissioner and now a partner at Locke Lord LLP, on the SEC's reluctance to standardize accounting principles and why the agency should be self-funded.

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TOP STORIES

EU Plan on Bank Capital Said to Face Challenge

BY JIM BRUNSDEN

At least four nations may challenge European Union plans to limit their power to regulate bank capital as governments seek a compromise on implementing global rules on the reserves lenders must keep to prevent a financial crisis, according to four people with knowledge of the matter.

Officials from the EU's 27 member states are weighing whether to scrap a proposal from EU Financial Services chief **Michel Barnier** to make the **European Commission** responsible for deciding bank capital levels during market turmoil, said the people, who declined to be identified because the talks are private. Nations are also considering widening the range of assets lenders may use to meet liquidity rules, the people said.

Barnier has been criticized by the U.K. and Sweden for seeking to restrain nation-

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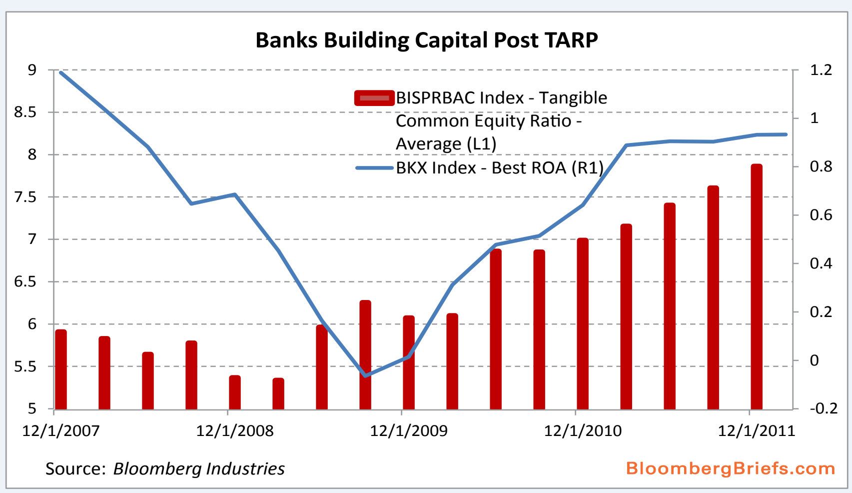
U.S. Banks Continued to Build Capital in the Fourth Quarter



U.S. banks continue to build capital, raising their tangible common equity ratio to 7.9% in the fourth quarter from 7.6% in the third quarter. Most banks have repaid the Troubled Asset Relief Program (TARP) and are offering guidance to pro-forma Basel III compliance.

—Alison Williams, senior analyst, Bloomberg Industries

ENFORCEMENT

■ The **Securities and Exchange Commission** charged two China-based executives — **Puda Coal Inc**.'s chairman **Ming Zhao** and former Chief Executive Officer **Liping Zhu** — with defrauding investors by selling stakes in a coal business that they had turned into an empty shell company. Zhao secretly transferred Puda's controlling interest in the China-based coal mining company to himself and then sold a portion to a fund controlled by **Citic Group**, China's largest state-owned investment firm, the SEC said. The transactions weren't approved by Puda Coal's board or shareholders and weren't disclosed in public filings, according to the SEC. During two Puda Coal offerings in 2010, the Citic fund was separately selling interests in the mining subsidiary to Chinese investors while Zhao and Zhu were telling U.S. investors Puda Coal owned a 90 percent stake, the agency said. According to the SEC, Zhao's counsel provided investigators a forged letter related to the mining assets after the agency had launched the probe.

■ The U.S. **Securities and Exchange Commission** has dismissed proceedings against former **Ferris Baker Watts** general counsel **Theodore Urban**, according to an SEC order. The SEC in October 2009 began administrative proceedings against Urban, accusing him of failing to responsibly supervise **Stephen Glantz**, a Ferris Baker broker who helped run a stock manipulation scheme, pleaded guilty to securities fraud charges and was sentenced to 19 months in prison. While an SEC administrative law judge last fall dismissed the case against Urban — who alerted his firm's managers and compliance officers when he grew suspicious of Glantz — the SEC's enforcement team appealed the ruling. Urban's attorney **John H. Sturc** said the recent order means "the case as to Mr. Urban is over, he has been vindicated, and all charges against him have been

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EU BID...

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al watchdogs' freedom to impose tougher capital rules on national banks. Barnier has said that requirements for lenders should be set by the EU, with limited exceptions for national regulators to exceed them to ease credit booms.

The commissioner included the curbs in a draft law he presented last year to implement rules agreed on by the **Basel Committee on Banking Supervision**. Chantal Hughes, Barnier's spokeswoman, declined to immediately comment.

The Basel committee last year said it would seek to impose capital surcharges of as much as 2.5 percentage points on the largest lenders as part of its response to the crisis that followed the 2008 collapse of Lehman Brothers Holdings Inc.

Denmark, which holds the rotating presidency of the EU, is seeking a deal on the implementation of the Basel rules next month. It would then need to negotiate the final version of the measures with lawmakers in the European Parliament.

Barnier's text would hand the European Commission power to set "stricter" capital rules for banks in cases where it's necessary to address "risks which arise from market developments," according to a copy of the document on the EU's website. The rules would be temporary, although no time limit is set out in the draft law. The extra requirements could apply across the whole EU or in individual countries.

Nations are considering proposing changes to the law that would keep the power with their own regulators, the people said. Decisions to hike capital requirements may still be reviewed or coordinated at EU level, they said.

On the liquidity rule, nations are considering amending a standard draft by the Basel committee that would require lenders to hold enough easy-to-sell assets to survive a 30-day credit squeeze.

Barnier's proposal said that regulators should assess which assets should count as highly liquid before the requirement comes into force in 2015. Officials are considering explicitly calling on supervisors to test a wider range of securities than those mentioned in the Basel text, the people said. This list may include some equities, two of the people said.

Bank Lobby Widened Reach of Volcker Rule

U.S. banks pushed regulators to widen proposed restrictions on trading and hedge-fund ownership by foreign firms, then encouraged governments around the world to complain about the rule's reach.

The two-pronged lobbying strategy resulted in foreign officials joining U.S. lenders to push back against the Volcker rule.

"The criticism of foreign governments on behalf of their banks is helping U.S. banks fight the rule," said **Anat Admati**, a professor of finance at Stanford University. "It also muddies the water, shifting the debate away from the main issue, which is reducing the risks banks impose on the economy."

The Volcker rule seeks to prevent deposit-taking firms from making bets with their own capital or owning hedge funds. Last year, U.S. banks including **JPMorgan Chase & Co.** and **Morgan Stanley** lobbied the Fed and other regulators to apply the regulation more broadly to companies based outside the U.S., according to four people with knowledge of the discussions who asked not to be identified because the talks were private.

In a December 2010 phone call, a lobbyist for JPMorgan told Fed officials the Volcker rule would create "a competitive disadvantage" for U.S. banks, according to a document on the agency's website. Seven Morgan Stanley executives met with six Fed staff members last April to express similar concerns, another document said.

Banks and their lobbyists later sent position papers to the Washington embassies of foreign governments and met with officials to warn that sovereign-debt prices would suffer if U.S. banks are barred under the Volcker rule from buying other

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ENFORCEMENT

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dismissed." The case also raised the issue of whether attorneys, auditors and compliance officers who advise financial institutions should be held liable for supervisory failure and thus be open to new liability for rogue trading and other offenses.

■ Seven people arrested by the U.K.'s financial regulator as part of its highest-profile insider-trading investigation may learn next month whether they'll be charged, two people familiar with the probe said. The suspects were arrested nearly two years ago by the U.K.'s **Financial Services Authority** and included employees who worked for **Deutsche Bank AG**, **Exane BNP Paribas** and **Moore Capital Management LLC**. The suspects must report to police stations in London on March 26 to discover if they're being prosecuted, said the people, who declined to be identified because they weren't authorized to discuss the case. The investigation is codenamed Tabernula, Latin for little tavern, and is probing whether the men engaged in the front-running of block trades. Investigators are seeking to determine if the suspects profited by using knowledge of upcoming securities sales, generally on behalf of a corporate client. Not all of the suspects will necessarily be charged next month and some final decisions may be delayed, one of the people said.

■ **Banco Santander SA** was fined 1.5 million pounds ($2.4 million) by the U.K. for not explaining to its customers when structured products it sold weren't covered by a government investigation-protection program. Santander should have changed its product literature and training material for structured products between October 2008 and January 2010, the **Financial Services Authority** said. Santander sold about 2.7 billion pounds of structured products during that time.

— Joshua Gallu, Dana Wilkie, Lindsay Fortado

BANK LOBBY...

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nations' bonds for their trading accounts, three of the people said. That led to an outpouring of letters from Canadian, Japanese and European Union officials, as well as from dozens of non-U.S. lenders, urging regulators to overhaul the rule.

"If you look at the proposed rule's preamble, it's clear that the U.S. regulators are trying to level the playing field between their banks and the outsiders," said **Douglas Landy**, head of the U.S. financial-services regulatory practice at **Allen & Overy**.

The international outcry, while it may help U.S. banks make their case for revising the Volcker rule, won't undermine its basic premise, said **Kim Olson**, a principal at **Deloitte & Touche LLP** in New York and a former bank supervisor.

Simon Johnson, an economics professor at the Massachusetts Institute of Technology, said the lobbying strategy could backfire. "The lobbyists have backed the regulators into a corner," he said. "They can't give in when all these foreign governments are pressing them. It would look bad before elections to cave in to foreign demands when your public wants you to be tough on banks."

— Yalman Onaran

U.K. FSA Is Probing Allegations in Libor Case

The U.K.'s **Financial Services Authority** is pursuing "significant cross-border investigations" related to the interest rate at which banks lend to each other, its acting head of enforcement said.

The regulator is probing "alleged misconduct" tied to the London interbank offered rate, **Tracey McDermott** said in a speech in London, the first public disclosure that the agency was reviewing Libor. The FSA is probing whether banks' proprietary-trading desks exploited information they had about the direction of Libor to trade interest-rate derivatives, potentially defrauding their firms' counterparties, two people familiar said.

Regulators are investigating whether banks attempted to manipulate the London, Tokyo and euro interbank offered rates, known as Libor, Tibor and Euribor. The U.S. **Securities and Exchange Commission**, U.S. **Commodity Futures Trading Commission**, U.S. **Justice Department**, and Japan's **Financial Services Agency** are all involved. The probes are being conducted separately, with regulators sharing some information.

The U.K. FSA is investigating whether banks' Libor submissions reflected their actual cost of borrowing and is scrutinizing market data for potential anomalies, another person familiar with the investigation said. The watchdog is scanning e-mails between bankers for code words that could be used to manipulate Libor, a person familiar with the case has said.

— Lindsay Fortado

CFTC to Consider Post-MF Global Futures Safeguards

The U.S. **Commodity Futures Trading Commission** will hold a roundtable next week to consider steps to safeguard collateral — including a plan to insulate futures clients' funds during a broker default — following the collapse of **MF Global Holdings Ltd.**, according to two people briefed on the agenda.

The plan, one of several possible regulatory changes, would mimic new rules completed Jan. 11 for the swaps market, according to the people, who spoke on condition of anonymity because the roundtable agenda isn't public. The swap plan is designed to protect clients' collateral if their broker defaults, while also allowing the customer funds to be pooled before a bankruptcy. The roundtable will take place on Feb. 29 and March 1, according to one of the people.

Separately, the CFTC re-proposed Dodd-Frank Act regulations that would determine when swaps are big enough that their price and size don't need to be reported immediately to the public.

"This new proposal also benefits from a review of a significant amount of market data in the interest rate and credit swap markets," CFTC chairman **Gary Gensler** said.

— Silla Brush

COMMENT

Volcker Rule Attracts Critics Across Industries While Banks Prepare for Implementation

Michael Greenberger, University of Maryland Law professor and former technical adviser to the UN and director of the Commodity Futures Trading Commission's division of trading and markets, says while changes still need to be made to the Volcker Rule to minimize complexities, banks need to be prepared for the end of "risk free" proprietary trading.

What started out as a three-page proposal by former Fed Chair Paul Volcker has been transformed into a 293-page proposed regulation bringing a response of over 16,000 comment letters.

The key triggering event for this activity is Section 619 of the Dodd-Frank Act, known as the Volcker Rule. Proposed by President Obama well over a month after passage of the House version of Dodd-Frank, the late introduction of this concept was doubtless a reaction to the previous November's surprising loss of a Democratic seat held for decades by late Massachusetts Senator Ted Kennedy.

The political post mortem of that defeat made it clear that the public was outraged that, in Justice Louis Brandeis's words, "Other People's Money" (read "insured customer deposits") was used by the big financial institutions to trade for their own account, leading to large "privatized profits and socialized losses."

That is, these institutions used costumer deposits and the safety net of the Fed window to place highly risky bets on subprime mortgage instruments, which when successful, led to outsized bonuses for bank traders; but, when those bets collapsed, led to the largest taxpayer bailout in U.S. financial history.

A surprising part of the public's anger focused on the seemingly technical 1999 law that repealed the Glass-Steagall Act (GSA). The Volcker Rule was designed to accommodate the GSA concepts to what Mr. Volcker saw as modern day economic needs. Section 619 bans bank proprietary trading in, for example, equities and derivatives with exceptions permitted for underwriting or the making of markets in financial instruments and investment in U.S. securities.

Bank ownership of hedge funds and private equity is limited to 3 percent; and banks are prevented from conducting trades in conflict with their customers. Moreover, all permissible proprietary trading under the Volcker Rule must be done in a fashion that does not jeopardize the economy (i.e., present systemic risk).

While much attention has been focused on Wall Street's many and lengthy written critiques of the rule proposal, not enough has been said about letters from advocates representing the broader public (e.g., Americans for Financial Reform (AFR), Better Markets, and Occupy Wall Street) arguing that the rule is far too weak.

For example, AFR (representing a group of 250 unions, consumer and public interest groups) complains that the proposed definition of "proprietary trading" is so lax that it authorizes trading in the very "complex, illiquid mortgage backed securities" and the "large short bets on the housing market" through "huge volumes of synthetic CDOs that broke the link between real economy activity and securities issuance while involving severe conflicts of interest with clients."

A prominent banking analyst recently estimated in the Financial Times that the proposed implementation of the rule "could knock 20 to 25 percent off banks' earnings." Indeed, what the New York Times recently called the most "unusual critics" of the rules, almost 30 large non-financial companies (including the owners of Red Lobster restaurant, Macy's and Safeway and organized by the Chamber of Commerce), charged that the proposed rule "will impede ability to raise capital and manage risk[.]"

Perhaps the most deft and noteworthy response to these criticisms comes from Mr. Volcker himself. In the Feb. 13 Financial Times Mr. Volcker rebuts a threat to liquidity: "[T]here are and should be thousands of hedge funds and other non bank institutions ready, willing and able to undertake proprietary trading in unrestricted securities in large volumes. [T]hose traders [will] not have access to the taxpayer support implicit in the safety net of commercial banks."

Despite the written complaints of banks, events in the real world show their plan to accommodate the rule. For example, on Jan. 27, the New York Times reported that Citigroup "is shutting its equity principal strategies desk" with its head trader "making plans to start his own hedge fund . . . Citigroup is one of many Wall Street firms to exit the proprietary trading business ahead of the Volcker rule." Moreover, the Financial Times reported that Goldman's CFO was telling an industry conference that Goldman had a "decidedly brighter view of the banking industry's future under the Volcker regime."

He outlined an attractive "Volckeresque model" evidenced by Goldman's winning of the right to make a market in the sale of the $6.2 billion in mortgage bonds acquired by the Fed during the bailouts.

As AFR made clear, pre-Volcker Rule liquidity "was marked by low level of business investment and what in retrospect was a massive capital misallocation into residential investment . . . with no corresponding growth in the real economy."

As to widespread complaints by foreign sovereigns that the rule discriminates against them by allowing U.S. bank trading in U.S., but not in sovereign, debt, Mr. Volcker asks "can it really be of concern that some of the largest [foreign] banks ... cannot maintain effective markets in sovereign debt," or that U.S. banks cannot "make markets" in those transactions? He is also "morally certain" that when the GSA absolute ban on U.S. commercial bank trading was effective, no foreign governments complained that there was insufficient liquidity for sovereign debt.

In the last analysis, changes will be made in the proposal. It is far too complex to remain as is. But, U.S. regulators have shown by actions both formal and informal that so-called "risk free" proprietary trading has done severe harm to the economy. Significant delays do not appear to be on the cards; and the banks are acting (if not writing letters) accordingly.

BANKING

BY DANA WILKIE

Broker-Dealers Face Liability for Third-Party Vendors Under Finra Draft Rule

Broker-dealers that hire third parties to help with information technology, accounting and other jobs would have supervisory responsibility, and ultimately liability, for their vendors' activities, under a draft Financial Industry Regulatory Authority rule.

Under the draft proposal, or Rule 3190, outsourcing "does not relieve the firm of its obligation to comply with applicable securities laws and regulations," nor can the firm "delegate its responsibilities for, or control over, any outsourced functions or activities." The proposal would require firms to create supervisory procedures for these vendors, including due-diligence measures, to ensure the third-party arrangements are "reasonably designed to achieve compliance" with regulations. Firms must also adopt procedures for taking "prompt corrective action" for lack of compliance.

Finra is proposing the rule to address requests from its members to identify jobs that firms may outsource to a third party and the appropriateness of using third parties that are not registered as broker-dealers, according to a draft of the rule. Small- and medium-sized broker-dealers, which make up the majority of Finra's members, commonly employ outside firms in the U.S. and overseas to perform tasks that broker-dealers lack the manpower or expertise to do themselves. Currently, broker-dealers follow Finra guidelines suggesting they vet vendors before hiring them. The draft rule would codify that guidance.

The proposal would require so much extra money and time from small- and medium-sized firms to check up on companies they partner with that some will go out of business or stop outsourcing and pass the costs to clients, according to broker-dealers and their contractors in comment letters.

"It's literally impossible for a small firm to check on every single outside vendor doing every single function to make sure they do the job right," said Howard Spindel, senior managing director for Integrated Management Solutions, which offers about 100 broker-dealers services ranging from IT to letter-drafting. "Certainly it might influence the marginal firms to shut down, and that's not in the public interest at all."

THIRD-PARTY VENDORS	
■ Payroll services	■ DTCC
■ Floor brokers	■ Central Registration Depository
■ Outside counsel	■ AML examiners
■ Independent auditors	■ Internet service providers
■ Tax return preparers	■ Execution platform providers
■ Banks	■ Algorithmic trading system analysts and programmers
■ Regulatory consultants	■ Service bureaus
■ IT providers	■ ATS firms
■ Outside financial and operations principals	

Above is a list of third-party vendors that broker-dealers would be responsible for under Finra draft rule 3190. The draft rule defines third-party service providers as "any person controlling, controlled by or under common control with a member firm, unless otherwise determined by FINRA."

Within 30 days of hiring a third party, the draft rule said, a firm must provide Finra with a description of the third party's function, identity, location and regulator. Within three months of the new rule's adoption, firms would need to notify Finra of all their outsourcing arrangements. The new requirements would also apply to any sub-vendor that a third-party contractor hires.

Some who have commented on the plan — notably investors and academics — said they like the idea.

"Smaller firms always face the issue of resources with regard to Finra regulations, but they still have to comply," said William Jacobson, director of Cornell University's Securities Law Clinic. "Why should firms be able to evade potential liability merely by outsourcing to another vendor? The rule makes it clear they can't avoid their responsibility simply by pointing their finger at someone they hired."

In a comment letter, the Securities Industry and Financial Markets Association said firms "could be required to either restructure existing [contractual] arrangements or unwind and rebuild existing infrastructure around such arrangements." SIFMA wrote that this would "create disruption in the industry and impact firms' ability to achieve scale and efficiency, and ultimately impact cost structure and competitiveness in the marketplace."

"Firms outsource because it saves money," said Melissa MacGregor, a SIFMA associate general counsel. "If they decide not to, they have to take those [jobs] in house, which would be more costly." Broker-dealers also said the proposal means extra paperwork to show they have vetted each vendor.

Randall L. Hansen, president and CEO of Michigan-based Centennial Securities Company LLC, wrote in a comment letter on the plan that some firms may be ill-prepared to handle functions that dividend or margin clerks typically do on the other end. He wrote that most firms cover TRACE reporting, AML and CIPO functions.

Integrated Management Solutions's Spindel said Finra staff intend to modify the rule so it's not as strict, and are discussing eliminating the sub-vendor requirement. Finra spokeswoman Nancy Condon said she couldn't comment on the status of the proposal.

TRADING

BY NELA RICHARDSON, BLOOMBERG GOVERNMENT SENIOR ECONOMIC ANALYST

Dodd-Frank Swap Rule to Increase Derivatives Costs, Foreign Competition for U.S. Banks

BANK TYPE	AVERAGE PUSH-OUT DERIVATIVES HELD	MAIN TYPE OF PUSH-OUT DERIVATIVE HELD
Megabanks	$4,000 billion	Subinvestment-grade credit
Super-regionals	$68 billion	Subinvestment-grade credit
Mid-sized Regionals	$13.6 billion	Commodity
Small Regionals	$6.4 billion	Equity
Community Banks	$0.14 billion	Equity and Commodity

Source: *Bloomberg Government analysis of bank call reports.*

The Dodd-Frank swap push-out rule may increase the cost of derivatives transactions for U.S. commercial banks, giving foreign banks an advantage, a Bloomberg Government analysis — the second of a three-part series — has found. It may also introduce more risk in the financial system.

Derivative instruments targeted by the swap push-out rule — commodity, equity and subinvestment-grade credit instruments — averaged 3 percent of total notional principal amount of derivatives held by U.S. banks from the second quarter of 2006 through the third quarter of 2011.

In 2006, push-out derivative holdings were $2.5 trillion. During the financial crisis, commercial bank holdings of push-out derivatives increased 125 percent. Trading in the push-out derivatives peaked in the first quarter of 2009 at $6.8 trillion. Holdings in these derivatives have decreased by 35 percent since then to $4.1 trillion in the third quarter of 2011.

During the five-year sample period, megabanks held 95 percent of push-out derivatives. Super-regionals held 1.6 percent and mid-sized regional banks held 0.32 percent. The two smallest categories of banks held virtually none of these derivatives. Before the financial crisis, mid-sized regional banks were active users of push-out derivatives. By increasing the cost of trading these derivatives, the push-out rule may force mid-sized regional banks to cease holding these swaps and further concentrate the derivatives market into the largest banks.

Banks have three alternatives in response to Section 716: stop trading equity, commodity and subinvestment-grade credit derivatives; place push-out derivatives in separately capitalized affiliates; or hold all derivatives in separately capitalized affiliates. This last option is the most expensive because it would require banks to fund all derivatives at market rates.

The harm of the swap push-out provision is the forced separation of risk management functions. Currently customers have the ability to negotiate loan terms in conjunction with a derivative that hedges their business risk and mitigates the credit risk to the bank, leading to lower borrowing costs. Section 716 disrupts this operation and may force customers to borrow from a different institution, increasing the costs of borrowing and hedging. Netting and collateralization benefits are also reduced under the push-out rule.

There are three potential unintended consequences from the provision. First, it makes equity, commodity and subinvestment-grade credit contracts more risky. Removing these swaps from banking oversight and into separately capitalized affiliates reduces the ability of regulators to monitor these transactions. Additionally, since affiliates will be capitalized at market rates, it will cost more to raise funds.

Second, regional banks may lack the liquidity and capital necessary to create a swap-dealing subsidiary under common ownership. Customers may be forced to split their banking needs between regional and larger banks that operate nationally, leading to inefficiencies in margining and netting. This would limit the monitoring of customer credit if customer hedging occurred outside their own institutions.

Third and most importantly, there's little indication that foreign regulators will adopt provisions similar to Section 716, setting the stage for pushing derivatives trading out of U.S. jurisdiction. It's possible that banks would also move other asset categories, such as interest rates and currency contracts, beyond regulatory reach.

Two outcomes could arise. Foreign banks may have an advantage in offering risk mitigation services to U.S.-based end-users at the expense of U.S. depository institutions, or U.S. broker-dealers may shift derivatives trading to foreign subsidiaries, most likely to London and other European offices.

This would reduce the effectiveness of other Dodd-Frank rules, such as FDIC's resolution authority, capital requirements for broker-dealers and clearing mandates by rerouting trading outside the scope of U.S. authority.

COURTS

BY SUSAN GREENWOOD, BLOOMBERG LAW ANALYST

Merrill Lynch ARS Case Dismissed, Minor Breach of Fiduciary Duty Claim Survives

The U.S. District Court for the Southern District of New York dismissed an auction rate securities case against Merrill Lynch & Co., Inc., determining the claims of market manipulation and securities fraud could not survive in light of Merrill's disclosures of its ARS practices. The Court concluded that the plaintiff did state a claim for breach of fiduciary duty against its broker-dealer Money Market 1 Institutional Investment Dealer (MM1).

Merrill was the underwriter for private offerings of ARS tranches of collateralized debt obligations, while MM1 served as plaintiff's broker-dealer. Merrill, the Court said, sold the ARS only to "Qualified Purchasers" at auctions, during which it placed support bids in order to ensure that the auction would not fail and the ARS would sell. According to the plaintiff, the support bids "cleared the auctions and established the clearing rate in 'a significant percentage' of the auctions." Once Merrill halted its practice of placing support bids, the auctions failed, leaving the plaintiff unable to sell its ARS holdings.

The plaintiff accused Merrill and MM1 of violating Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (Exchange Act), Rule 10b-5 thereunder, and various state and common law claims. The Court dismissed all of the plaintiff's claims except for a single count of breach of fiduciary duty against MM1. The plaintiff failed to demonstrate either a misstatement or omission concerning Merrill's ARS practices. The plaintiff made "two basic points" concerning its Exchange Act claims:

- Merrill's use of support bids affected the clearing rate for ARS auctions; and
- Its "ARS market activities created a false appearance of liquidity and thereby artificially inflated prices paid for ARS."

According to the Court, Merrill's website clearly disclosed its practice of placing support bids and the potential effects of such a practice, including effects on the clearing rate, and the possibility of auction failures.

Similar to its claims against Merrill, the plaintiff alleged that MM1 violated the Exchange Act through market manipulation and material misstatements and omissions. However, the Court explained that the claims against MM1 turn on the broker-dealer's "purported failure to disclose the unsuitability of its recommended investments (the Merrill ARS)." According to the plaintiff, the ARS were unsuitable investments because MM1 failed to disclose the liquidity risks stemming from Merrill's alleged ARS market activities.

MM1 allegedly breached its duty to the plaintiff by recommending ARS that violated the plaintiff's stated investment goals. Insofar as this alleged breach resulted in an alleged loss when the plaintiff could not sell its ARS, the Court concluded that the plaintiff stated a claim for breach of fiduciary duty against MM1.

Mass Mutual Fends Off Dismissal of Mortgage-Backed Securities Lawsuit

The U.S. District Court for the District of Massachusetts denied motions to dismiss multiple lawsuits by Mass Mutual Life Insurance concerning its purchase of mortgage-backed securities.

Mass Mutual commenced "nine nearly identical actions" concerning its purchase of residential mortgage-backed securities certificates between 2005 and 2007. The certificates were sold pursuant to offering documents, which according to Mass Mutual, contained misstated or omitted material facts. The Court observed that across all nine complaints, Mass Mutual alleged a wholesale abandonment of underwriting guidelines.

Defendants sought refuge in the offering documents' language that "originators could and would make exceptions to their underwriting guidelines." The Court concluded that the disclosures "are not enough to vitiate Plaintiffs' section 410(a) claim" under Nomura.

Mass Mutual alleged that the actual owner-occupancy rates were significantly lower than those identified in the offering documents. Here, however, the Court found that Defendants' disclosures shielded them from liability. One set of offering documents, the Court explained, did not include these disclosures or otherwise identify the methodology used to calculate owner-occupancy rates. Although Defendants took issue with Mass Mutual's contention that the rates were incorrect, the Court determined that "'[if] the actual owner-occupancy rate was different from that represented by Defendants, Defendants' [sic] made a misrepresentation." Accordingly, Mass Mutual's owner-occupancy claim survived for only the complaint based on these offering documents.

The Court held that certain Defendants (Non-Underwriters) were not sellers under Section 410(a) of the Massachusetts Uniform Securities Act. The Non-Underwriters, the Court continued, did not directly sell certificates. While Mass Mutual alleged that the Non-Underwriters were involved in preparing the certificates for market, drafting the offering documents, and "profit[ing] from the sale of the certificates," the Court explained that the test does not evaluate "'the defendant's degree of involvement in the securities transaction and its surrounding circumstances.'" Rather, the inquiry is simply the "'defendant's relationship with the plaintiff-purchaser.'"

Mass Mutual, however, noted that Securities and Exchange Commission Rule 159A defines an issuer as a seller of securities for purposes of liability under Securities Act Section 12(a)(2). Noting that since the rule became effective in 2005, only two courts have applied it, the Court declined to use an SEC regulation to "countermand a contrary Supreme Court holding." Accordingly, the Court dismissed the Non-Underwriters from the litigation.

REGULATION TRACKER

BY BLOOMBERG NEWS

FSA CHINA Hong Kong SFC ESMA EBA EIOPA JAPAN FSA

Securities Board of India EU Parliament European Commission Internal Markets

Global Tracker

DATE	ORGANIZATION	EVENT	ACTION
Feb. 25, 2012	European Securities and Markets Authority	Possible Delegated Acts Concerning the Prospectus Directive	Consultation Ends
Feb. 27, 2012	U.K. Financial Services Authority	Regulated Covered Bond Regime	Consultation Ends
Feb. 27. 2012	Australian Securities and Investments Commission	EDR jursidiction on complaints in debt recovery legal proceedings	Consultation Ends
Feb. 29, 2012	European Securities and Markets Authority	Consultation on Materiality in Financial Reporting	Consulation Ends
March 2, 2012	Basel Committee on Banking Supervision	Consultation on Bank Audits	Consultation Ends
March 6, 2012	Australian Securities and Investments Commission	Consultation on Trustee Companies Registration Transfers	Comments Due
March 9, 2012	European Securities and Markets Authority	Consultation on short selling and CDS	Consultation Ends
March 13, 2012	International Accounting Standards Board; Financial Accounting Standards Board	Standards for Revenue Recognition	Deadline for Recommendations
March 20, 2012	European Banking Authority	Consultation on Supervisory Reporting Standards	Consultation Ends
March 26, 2012	Monetary Authority of Singapore	Consultation on Transfer of Regulatory Oversight of Commoidty Derivatives	Consultation Ends
March 26, 2012	Monetary Authority of Singapore	Consultation on OTC Derivatives	Consultation Ends
March 29, 2012	U.K. Financial Services Authority	Sale and Rent Bank Review 2011	Consultation Ends
March 30, 2012	European Securities and Markets Authority	Guidelines on ETFs and other UCITs issues	Consultation Ends
March 30, 2012	U.K. Financial Services Authority	Mortgage Market Review	Consultation Ends

Final Rules

DATE	ORGANIZATION	EVENT	ACTION
March 31, 2012	Hong Kong Securities and Futures Commission	Short-Position Reporting Rule	Effective Date
March 31, 2012	Japan’s Financial Services Agency	Public Notices on Capital Adequacy Ratios of Financial Instruments Business Operators	Implementation Date
April 1, 2012	Hong Kong Securities and Futures Commission	Anti-Money-Laundering and Counter Terrorist Financing	Effective Date
June 18, 2012	Hong Kong Securities and Futures Commission	Short-Position Reporting Rule	Commencement Date
August 1, 2012	Australian Securities & Investments Commission	Disclosure of Agribusiness Scheme Benchmark and Principal information on Products	Compliance Date

REGULATION TRACKER

BY BLOOMBERG NEWS

U.S. Tracker

DATE	ORGANIZATION	EVENT	ACTION
March 5, 2012	Commodity Futures Trading Commission	Agency Information Collection Activities: Rules Relating to Regulation of Domestic Exchange-Traded Options	Comments Due
March 5, 2012	Treasury Department	Proprosed Rule on Assessment of Fees on Large Bank Holding Companies and Nonbank Financial Companies Supervised by the Federal Reserve Board to Cover the Expenses of the Financial Research Fund	Comments Due
March 12, 2012	Securities and Exchange Commission	FINRA Rule on Private Placement of Shares	Comments Due
March 13, 2012	Commodity Futures Trading Commission	Swap Data Record Keeping and Reporting Requirements	Comments Due
March 14, 2012*	Federal Deposit Insurance Corporation	Permitted Investments by Federal and State Savings Associations: Corporate Debt	Comments Due
March 19, 2012	Securities and Exchange Commission	U.S. Sentencing Guidelines	Comments Due
March 23, 2012	Securities and Exchange Commission	Study Regarding Financial Literacy Among Investors	Comments Due

**Estimated Date*

Final Rules

DATE	ORGANIZATION	EVENT	ACTION
Feb. 24, 2012	Securities and Exchange Commission	Covered Securities of BATS Exchange	Effective Date
Feb. 27, 2012	Securities and Exchange Commission	Net Worth Standard for Accredited Investors	Effective Date
March 9, 2012	Commodity Futures Trading Commission	Real-Time Public Reporting of Swap Transaction Data	Effective Date
March 13, 2012	Commodity Futures Trading Commission	Swap Data Recordkeeping and Reporting Requirements	Effective Date
March 13, 2012	Commodity Futures Trading Commission	Reporting by Investment Advisers to Private Funds, Commodity Pool Operators, Commodity Trading Advisers	Effective Date
March 19, 2012	Commodity Futures Trading Commission	Final Rule on Registration of Swap Dealers and Major Swaps Participants	Effective Date
March 30, 2012	Securities and Exchange Commission	Implementing Investment Advisers Act	Effective Date
March 31, 2012	Securities and Exchange Commission	Form PF Reporting Requirements	Effective Date
April 1, 2012	Federal Reserve Board	Debit Card Interchange Fee	Compliance Deadline
April 1, 2012	Federal Deposit Insurance Corp.	Resolution Plans Required for Insured Depository Institutions With $50 Billion or More in Total Assets	Effective Date
April 9, 2012	Commodity Futures Trading Commission	Protection of Cleared Swaps Customers Contracts and Collateral, Conforming Amendments	Effective Date
April 17, 2012	Commodity Futures Trading Commission	Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties	Effective Date
June 18, 2012	Commodity Futures Trading Commission	Investment of Customer Funds	Compliance Deadline
July 1, 2012	Federal Reserve Board	Banks' Initial Resolution Plans	Compliance Deadline

CALENDAR

TO SUBMIT AN EVENT EMAIL FINREG@BLOOMBERG.NET

FDIC UK FSA SEC Congress EU Commission EU Parliament OCC Bloomberg
ESMA EBA EIOPA CFTC

DATE	EVENT	FEATURING	LOCATION
Feb. 24, 2012	Shadow Banking, Past, Present, Future	Jonathan Macey, Yale Law School is Keynote Speaker	Boston
Feb. 28 - 29, 2012	London School of Economics, Financial Markets Group, "Complements to Basel"	Morgan Stanley's David Greenlaw Talks about Reforming Real Estate Markets	London
Feb. 28 - March 2, 2012	Risk & Return South Africa	Ashley Pillay, Director, Group Capital Management, Standard Bank to Talk About Effective Capital Management Under Basel II	Cape Town
March 1, 2012	ISDA, Fundamentals of Clearing	Program in Development	Hong Kong
March 1, 2012	International Centre for Financial Regulation, Insurance Summit	John Nelson, Incoming Chairman, Lloyds of London, Talks about "Redefining Insurance in Society"	London
March 1, 2012	Over-the-Counter Derivatives Regulators' Forum	Meeting of 50 Global Financial Authorities, including Central Banks, Markets Authorities and Prudential Supervisors	Hong Kong
March 5 - 6, 2012	Institutional Investors' Congress	Gordon Beaumont, OBE, Chairman, Alfred McAlpine, Pension Scheme to Lead Regulatory Panel	London
March 8, 2012	European Money and Finance Forum, International Centre for Financial Regulation	Future Risks and Fragilities for Financial Stability, Program in Development	London
March 15, 2012	International Compliance Association	2012 Award Ceremony	London
March 22, 2012	Bloomberg Sovereign Debt Conference	Thomas Mayer, Deutsche Bank Chief Economist, Will Speak on Sovereign Debt	Frankfurt
March 22 - 24, 2012	Dow Jones Global Complaicne Symposium	Alfred Rosa, Director of Compliance & Senior Executive Counsel, GE	Washington D.C.
March 24, 2012	American Bar Association Committee on State Regulation of Securities	Committee Meeting	Las Vegas
March 31, 2012	German Banking Congress	Andrea Enria, EBA, Keynote Speaker	Berlin
April 16 - 20, 2012	Global Derivatives Trading & Risk Management	Working Groups on Regulation	London
April 17, 2012	International Capital Markets Association Annual Conference, National Association of Financial Market Institutional Investors	Senior Speakers from China's Capital Markets	London
April 18, 2012	Federation of European Accountants	Anti Money Laundering Round Table	Brussels
April 26, 2012	Federal Reserve Bank of New York	Regulatory Reporting Best Practices	New York City
April 27, 2012	U.S. Securities and Exchange Commission	Public Hearing on Dividend Equivalents for Tax Purposes	Washington D.C.
April 30 - May 2, 2012	ISDA Annual General Meeting	Conference Agenda in Development	Chicago
May 9, 2012	British Property Federation, Annual Conference	Program in Development	London
May 16, 2012	European Post-Trade Conference	Conference Agenda in Development	London

FOR THE RECORD


John Reed Stark

John Reed Stark, managing director and deputy general counsel at **Stroz Friedberg**, recently leaned on Hollywood to illustrate his presentation in a Securities Docket-sponsored webinar called "Insider Trading Compliance for Hedge Funds and Other Regulated Entities." Introducing the topic of the SEC's new whistleblower protections and bounties, Stark flashed an image of Matt Damon in "The Informant" — the movie that chronicles famed whistleblower Mark Whitacre — and warned listeners that "you have to remember that if you think something is confidential in your company, there might be one disgruntled employee who is more than happy to report [it] effortlessly. They can do it in their pajamas at three in the morning and just anonymously report something to the SEC." Also in the presentation: An image of "Willy Wonka and the Chocolate Factory's" notoriously spoiled character Veruca Salt, accompanied by Stark's suggestion that when the SEC wants data that's spoiled, "have a process. See if there are backup tapes, see if there are prior snapshots, [or] deleted emails."

—Dana Wilkie

Paul Schott Stevens, **Investment Company Institute** president and chief executive officer, said the Commodity Futures Trading Commission's amended Rule 4.5, which significantly narrows broad exemptions for registered investment companies and private funds from commodity pool operator status, "is a prime example of regulatory overreach and will subject potentially thousands of mutual funds to duplicative and unnecessary regulation that increases costs for fund shareholders. Under the rule, which was not part of the regulatory reform law enacted by Congress in 2010, many funds that invest in derivatives will be subject to burdensome requirements on their operations, even though these funds are already comprehensively regulated by the SEC." Stevens added: "The CFTC has not made a remotely adequate case for a rule that will disserve the interests of millions of fund investors."


Paul Schott Stevens

—Melissa Karsh


Mary Schapiro

Mary Schapiro, **Securities and Exchange Commission** chairman, said money-market fund regulations need to be revamped quickly to fix the funds' inherent vulnerability to runs. "I do feel a sense of urgency about the structural weaknesses that exist in money-market funds," Schapiro said at a Washington breakfast. The SEC has been working on two possibilities to change aspects of the $2.6 trillion money funds industry that make them "prone to runs," she said, with the agency considering either a departure from the traditional $1 share price or mandating capital cushions.

— Jesse Hamilton

Tracey McDermott, acting director of enforcement and financial crime division of the U.K. **Financial Services Authority**, commented in a recent speech on the regulator's role in curbing wrongdoing and ensuring the best operation of the financial services industry. "The key message is the same in our cases – where people put relationships with colleagues, employers, sources of income, etc., above their obligations as approved persons we will take action. Because of your relationship to the wrongdoer you become the dog that doesn't bark, and we will pursue you," McDermott said.

— Melissa Karsh


Tracey McDermott

ROSTER

BY DANA WILKIE

Locke Lord Adds London Office Director

Roger Abrahams has joined **Locke Lord LLP** as the director of its newly opened London office to help strengthen the firm's core practices, including banking, finance and capital markets. Abrahams has previous international law firm management experience in banking and finance as a former global managing partner at **Salans**, chief general counsel for **Ford Credit Bank Europe plc** and senior independent director of **European Motor Holdings plc**.

Siemens Names General Counsel in the Americas

Rose Marie Glazer has been named general counsel for **Siemens** in the Americas and will be based in Washington, D.C. With the firm since 2004, Glazer was most recently general counsel for Siemens PLM Software based in Plano, Texas, where she oversaw global legal affairs and all corporate governance matters. Glazer was also general counsel for Siemens Mesoamerica, overseeing the company's legal departments in Mexico, Central America and the Caribbean. Glazer will also serve as senior vice president, general counsel and secretary for Siemens Corporation in the United States.

Ex-DOL Official Campbell Joins Drinker Biddle

Brad Campbell, former assistant secretary of labor of the **Employee Benefits Security Administration**, joined **Drinker Biddle & Reath LLP** as counsel in the employment benefits group and financial services ERISA team in Washington, D.C. Campbell joined from **Schiff Hardin LLP**. Before that, Campbell was ERISA's primary regulatory and enforcement official, playing a key role in every significant ERISA retirement and health reform of the prior decade.

— Melissa Karsh

Q&A

Roel Campos on Standardizing Accounting Principles, Self-Funding the SEC

Roel Campos, a former SEC commissioner and now a partner with Locke Lord LLP, tells Dana Wilkie the SEC won't commit to a timetable for convergence of U.S. and international accounting standards. He also discusses why the SEC should be self-funded.

Q: What pending securities regulations are at the center of your radar?
A: Clients that are young public companies worry traders are using illegal tricks like naked short selling. While my clients support short trading, they oppose the abuse that occurs when shares being sold short are not identified in advance and not delivered in the three-day period. The SEC [is requiring] brokers to buy shares to cover short sales. Enforcement, however, seems to be ineffective. Fails to deliver (FTDs) have migrated recently to ETFs, where large numbers of FTDs are occurring. Academics and students of the markets fear the situation with ETFs has increased volatility and caused the tight coupling of all classes of stocks and commodities, moving up and down together. Registration requirements for hedge funds and private equity funds are also causing consternation. Private equity funds that use little or no leverage cannot understand the need to be registered as investment advisers. Their business model provides for building existing companies over long periods – seven years or more – and they do not understand what systemic risk they provide.

Q: A common complaint is that the SEC is not getting enough money from Congress to meet its Dodd-Frank mandate. Has Dodd-Frank made the need for resources more pressing?
A: The Sarbanes-Oxley Law provided additional funding, which, unlike with Dodd-Frank, was actually appropriated. Ironically, the agency could not spend the money quickly enough and hire enough new lawyers, so the SEC returned money to the Treasury. Dodd-Frank provided for more resources, which [Congress] chose not to appropriate. There have always been members of Congress whose constituents mistrust the SEC and believe the SEC will run roughshod over business. These members view it as a deliverable to their constituents to keep the SEC subdued and starved. I have advocated for the SEC to be self-funded like the Fed, which sets its own budget and collects fees from member banks. While the SEC collects fees from registrants in excess of its needs, all those fees go to the U.S. Treasury, and the SEC then has to beg the Appropriations Committee for funding.

Q: Regulators have finalized only a fraction of rules under Dodd-Frank. Do you think the pace will start to pick up?
A: The hundreds of rulemakings and studies imposed by Dodd Frank are daunting. [Because] there seems to be an understanding in Congress that the SEC needs more time, there have been no repercussions for not meeting deadlines. Complicating the situation is the recent D.C. Court of Appeals case striking down the SEC's shareholder access rule, [which makes] it almost impossible to pass a rulemaking that is controversial. Consequently, the SEC must move slowly to try to find a solution that is agreeable to all sides. That is very difficult.

Q: While at the SEC, you were vice chair of the technical committee of the International Organization of Securities Commissions. What technical developments at the SEC are you following?
A: The SEC's effort to develop a consolidated audit trail for tracking securities transactions will be a major milestone. Today, tracking a particular securities trade may take weeks or longer, using antiquated paper forms that go to brokers and exchanges. With the consolidated audit trail, suspicious occurrences, such as the flash crash, or potential market manipulation schemes using super-fast computers may be detected and allow for successful enforcement.

Q: At the SEC, you helped develop international auditing and accounting standards. What are some recent SEC developments in that area?
A: The U.S. uses General Accepted Accounted Principles and the rest of the world has moved to International Financial Reporting Standards. This produces different financial results in financial statements. At one time it looked fairly certain the SEC would set up a timetable in which the U.S. would adopt IFRS. It now looks as if this Commission will not commit to a timetable. I have always thought the SEC should permit U.S. global companies to report in the U.S. [using international standards]. U.S. global companies could save much money if they could stay with one reporting set of standards.

(This interview was edited and condensed.)

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