



## LEGAL & COMPLIANCE MONTHLY INBRIEF\*

JULY 22, 2014

### INDUSTRY HEADLINES

- **Fink Says Federal Regulatory Process Needs Transparency: July 16, 2014**  
BlackRock CEO Laurence D. Fink reiterated his concerns about the U.S.'s systemic institution designation process and the lack of transparency. "Under Dodd-Frank, banks, anybody related to Dodd-Frank, whether it's a SIFI or anything else, we're not allowed to have a dialogue," he said. "This is very unusual. In any other type of rule creation in Washington, there's always a process of dialogue. So it's a pretty inappropriate process from our perspective." [Read more.](#)
- **Barclays Dark Pool Volume Fell 37% in Week of New York's Lawsuit: July 14, 2014**  
Barclays Plc saw a 37 percent decline in the number of U.S. shares that traded in its dark pool during the week that it was sued by New York for allegedly lying to customers of that venue. About 197 million shares were traded in the dark pool during the week of June 23, down from 312 million the previous week, according to data from the Financial Industry Regulatory Authority. Three of the London-based bank's largest rivals -- Credit Suisse Group AG, UBS AG and Deutsche Bank AG -- saw increases during the week, the FINRA data show. [Read more.](#)
- **Banks Dreading Computer Hacks Call for Cyber War Council: July 8, 2014**  
Wall Street's biggest trade group has proposed a government-industry cyber war council to stave off terrorist attacks that could trigger financial panic by temporarily wiping out account balances, according to an internal document. The proposal by the Securities Industry and Financial Markets Association, known as SIFMA, calls for a committee of executives and deputy-level representatives from at least eight U.S. agencies including the Treasury Department, the National Security Agency and the Department of Homeland Security, all led by a senior White House official. [Read more.](#)
- **Ex-JPMorgan Trader Wins Review of FCA's Decision to Drop Probe: July 8, 2014**  
Former JPMorgan Chase & Co. trader Julien Grout was granted a court review of a U.K. regulator's decision to drop him from a probe into a \$6.2 billion trading loss before he was allowed to respond to the allegations. [Read more.](#)
- **New price-reporting rules aimed at bringing transparency to Europe's \$11.4 trillion corporate-bond market may do little to curb risky practices: July 2, 2014**  
"In a really strong market, or a really poor market, reporting can create a momentum that exacerbates whichever way things are going," said Christine Kenny, head of trading and compliance at Loomis Sayles in London. "Trace added to a momentum that wasn't always helpful," referring to the U.S.'s Trade Reporting and Compliance Engine. "If you don't know the full picture, using that single point as your main reason for choosing the level where you want to trade next, you're trading in a vacuum really," she said. "Taken on its own it's not a helpful piece of information." [Read more.](#)

### CONGRESSIONAL ACTION

#### **CYBERSECURITY**

- **Senate Passes Terrorism Risk Insurance Act But Without Any Cyberterrorism Provisions: July 17, 2014**  
The Senate voted 93-4 in favor of a bill to reauthorize Terrorism Risk Insurance Act, but measure doesn't specifically address coverage for damages from terrorist cyberattacks. A more ambitious House Republican bill (H.R. 4871), which also lacks specific cyberterrorism language, has struggled to achieve enough support, both from Democrats and fellow Republicans. [Read more.](#)

\*This is not an all-inclusive list of congressional, agency and market participant actions related to these issues. It is a snap-shot of what we believe is of most interest to institutional investors. Some links are to subscriber-only sites.

## **HFT OVERSIGHT**

- **SEC's High-Speed Trader Plan Embraced by Exchange Leaders : July 15, 2014**

A sweeping blueprint by the U.S. Securities and Exchange Commission to reduce conflicts of interest in the stock market won support from leaders of exchanges and large money managers. Chief executives from the New York Stock Exchange to institutional investors backed the SEC's call to rein in some high-frequency trading and make dark pools disclose more about how they work. The SEC also should move forward with a plan to require that brokers provide investors with detailed maps of how their orders are filled, the executives said. [Read more.](#)

## **MAKER-TAKER**

- **SEC Should End Maker-Taker, Payment for Order Flow, Levin Says: July 15, 2014**

The U.S. Securities and Exchange Commission should act immediately to eliminate two stock market pricing models that create conflicts of interest for brokers, Senator Carl Levin said in a letter to SEC Chair Mary Jo White. Levin criticized systems used by exchanges such as Nasdaq OMX Group Inc. and wholesalers such as Citadel Securities that pay brokers who send orders to be filled. Intercontinental Exchange Inc. Chief Executive Officer Jeff Sprecher and IEX Group CEO Brad Katsuyama also have called for regulators to ban maker-taker, a system in which rebates are paid to brokers who provide exchanges with liquidity. [Read more.](#)

## **MONEY-MARKET FUNDS**

- **Prime Money Funds Said to Float \$1 Price Under SEC Plan: July 10, 2014**

The riskiest money-market mutual funds will have to let their share prices fluctuate and charge investors withdrawal fees during times of stress under tougher U.S. rules set for adoption this month. The Securities and Exchange Commission is poised to impose both requirements on some money-market mutual funds, which required a federal backstop during the 2008 financial crisis, according to a person familiar with the matter who asked to not be named because terms of the final rule haven't been made public. Key parts of the proposal have been strongly opposed by the funds' trade group, the Investment Company Institute, and fund-management company Federated Investors Inc. (FII), which said that a floating share price would destroy demand for prime institutional funds, which invest in short-term corporate debt. The final rule, which began as a proposal issued last year, is likely to be voted on by the five-member commission on July 23, the person said. [Read more.](#)

## **SIFI DESIGNATION OF ASSET MANAGERS**

- **House Lawmakers Say 'Too Big To Fail' Panel Too Secretive: July 16, 2014**

Democratic and Republican lawmakers are cooperating on legislation that would lift some of the secrecy around the U.S. council that decides which companies pose the biggest risks to the financial system. The proposed legislation, drafted with help from the main lobbying group for mutual funds, would require the Financial Stability Oversight Council to give firms early notice that they could be designated systemically important -- a status that puts them under Federal Reserve oversight in an effort to dispel any perception they are "too big to fail." [Read more.](#)

## **VOLCKER RULE**

- **Hensarling Challenges Lew over Volcker rule impact: July 10, 2014**

The head of the U.S. House Financial Services Committee is calling on Treasury Secretary Jacob J. Lew to make sure that new regulation doesn't inhibit corporate bond liquidity. Representative Jeb Hensarling, a Republican from Texas, asked Lew to ensure implementation of the Volcker Rule doesn't reduce trading of company bonds, according to a letter sent this week, the Financial Times reported earlier today. The rule restricts banks from making certain types of bets with their own money. Reduced liquidity could lead to higher borrowing costs for companies and slower economic growth, according to the letter, dated July 8. The biggest Wall Street banks have curbed the amount of bonds they hold since the credit crisis. Dealers cut their holdings of the securities by 76 percent from a record high in October 2007 to \$56 billion in March 2013, when the Federal Reserve changed the way it reported the data. [Read more.](#)

## AGENCY ACTION

### 1. AGENCY ANNOUNCEMENTS

#### **ENFORCEMENT**

- **Ernst & Young to Pay \$4 Million Over SEC Lobbying Claims: July 14, 2014**

Ernst & Young LLP agreed to pay \$4.1 million to settle U.S. regulatory claims that it violated auditor-independence rules when its subsidiary lobbied congressional staff on behalf of two clients. Washington Council EY, a subsidiary, was prohibited from lobbying on behalf of clients because Ernst & Young repeatedly said in audit reports that its reviews of the companies' financial reports were independent, the Securities and Exchange Commission said today in a statement. [Read more.](#)

#### **GLOBAL OVERSIGHT OF ASSET MANAGERS**

- **BOE Proposes Extra Leverage Limit on Banks: July 11, 2014**

Global regulators have been seeking ways to make banks safer after the collapse of Lehman Brothers Holdings Inc. in 2008 sparked a financial crisis and government-led bailouts around the world. The so-called leverage ratio has since been part of the Basel Committee on Banking Supervision's armory, requiring banks to hold at least 3 percent in equity capital as a percentage of all their assets to cut firms' debt reliance. In the U.S., the largest bank holding companies will need to round up as much as \$68 billion more in loss-absorbing capital under supplemental leverage ratio rules adopted by regulators. Eight lenders, including JPMorgan Chase & Co. (JPM) and Bank of America Corp., are required to hold capital equal to at least 5 percent of total assets, surpassing Basel rules. [Read more.](#)

#### **INSIDER TRADING**

- **SEC Says House Insider Probe Involves 44 Funds, Entities: July 18, 2014**

An insider-trading probe involving the U.S. House Ways and Means Committee and a top staff member also includes dozens of hedge funds, investment advisers and other firms, the U.S. Securities and Exchange Commission said in a court filing. In arguing against the House's motion to dismiss the case or send it to a court in Washington, the SEC told a Manhattan federal judge that the geographic scope of its investigation is "much wider" than described by lawyers for the House and involves a total of 44 entities. The probe concerns some of the largest hedge funds and asset-management advisers in the U.S., the SEC said in the July 16 filing. Twenty-five of the 44 are based in New York, it said. [Read more.](#)

- **Rengan Rajaratnam Talks to SEC About Settling Civil Case: July 17, 2014**

Rengan Rajaratnam, acquitted of criminal insider trading charges this month, is seeking more time to talk to the U.S. Securities and Exchange Commission to resolve civil claims by the agency. Regulators and Rajaratnam, the younger brother of convicted inside trader Raj Rajaratnam, asked U.S. District Judge John G. Koeltl in Manhattan in a letter today to extend a postponement of the SEC's case by 60 days "to discuss resolving the pending litigation." Koeltl put the SEC case on hold in December to allow time for Rajaratnam's criminal trial to conclude. The SEC sued Rengan Rajaratnam in 2013 over his alleged role in an insider trading conspiracy with his brother from 2006 to 2008. The SEC claimed he made more than \$3 million in illegal profits for himself and for Galleon Group LLC, the firm co-founded by Raj Rajaratnam. [Read more.](#)

- **Ex-Goldman Banker Korenberg Is Told SEC Galleon Probe Closed: July 2, 2014**

Ex-Goldman Sachs Group Inc. banker Matthew Korenberg, the subject of a years-long insider-trading probe tied to Galleon Group LLC, was told he won't be sued by regulators. John Hueston, a lawyer for Korenberg, said in a telephone interview that the U.S. Securities and Exchange Commission, which was ready to file a civil complaint 18 months ago, officially "de-authorized" his client as a lawsuit target. Hueston said it's "extraordinary" for the SEC to be persuaded to drop a case it was ready to proceed with. [Read more.](#)

#### **LEVERAGE**

- **OCC Sees Potential Losses From Junk Loans as Greater Than Before: July 10, 2014**

The market for junk-rated corporate loans may be setting itself up for greater losses than in past cycles, because companies will struggle to refinance debt cheaply as interest rates rise from record lows, according to Martin Pfingraff, the Office of the Comptroller of the Currency's top large-bank supervisor. "It is likely that there will be a

higher level of default and debt restructuring,” Pfinsgraff, senior deputy comptroller for large-bank supervision, said in an e-mailed response to questions from [Bloomberg News](#). “Because of the rapid increase in the volume of leveraged issuance the past three years, the magnitude of potential [losses](#) under a stress scenario may likely increase from the prior cycles.” [Read more](#).

- **OCC Warns U.S. Banks Against Returning to Riskier Lending: June 25, 2014**

U.S. banks striving to bolster profits amid slow growth and new regulations are being warned against returning to riskier lending, as syndicated leveraged loan issuance reached a record high in 2013. Leveraged loans have seen declines in underwriting standards, the OCC said in a risk report. The average total-debt-to-EBITDA multiple for leveraged loans issued in 2013 rose to 4.7 times, the OCC said, which was a level last exceeded in 2007. [Read more](#).

#### **MUNIS**

Bond Fee Disclosures Sought by SEC to End 38-Year Debate: July 17, 2014

After a 38-year debate on how to make trading costs for corporate and municipal debt transparent, regulators are making another attempt at forcing dealers to disclose how much they earn on the transactions. The Municipal Securities Rulemaking Board will discuss a proposal at the end of the month, Executive Director Lynnette Kelly said yesterday, after U.S. Securities and Exchange Commission Chair Mary Jo White asked the regulator to come up with a plan by year end. The new rules would apply to so-called riskless trades, where firms fill client orders rather than use their own money to opportunistically buy. [Read more](#).

#### **OVERSIGHT OF ASSET MANAGERS**

- **SEC Commissioner Piwowar Calls FSOC ‘Vast Left-Wing Conspiracy’: July 17, 2014**

The SEC’s Michael Piwowar called the Financial Stability Oversight Council a “vast left-wing conspiracy to hinder capital formation.” He made the remarks in a speech July 15 at the American Enterprise Institute in Washington. The FSOC’s initials really stand for “Firing Squad on Capitalism,” Piwowar, 46, said. He called the council “the Bully Pulpit of Failed Prudential Regulators” and “the Dodd-Frank Politburo,” adding that his opinions are his own and that the pejoratives are “entirely accurate.” The 2010 Dodd-Frank Act created the council, a panel of regulators in the Treasury Department, to prevent another financial crisis. [Read more](#).

#### **SYSTEMIC RISK**

- **Fed’s New Data Sheds light on Systemic Risk Question: July 16, 2014**

The Federal Reserve opened a window to a trove of data that can be used to assess the risk that each of the 33 big banks in the U.S. pose to the financial system. The Fed said in a statement that the numbers are available through a website, which lists total assets, exposures and data on interconnectedness. The Fed said systemic risk reports for the banks will be published annually. [Read more](#).

- **Fischer Says Financial Stability Panel Needs More Power: July 10, 2014**

Federal Reserve Vice Chairman Stanley Fischer said a council of financial regulators established by the Dodd-Frank Act may need more authority to help guard against threats to the banking system. Members of a committee of key regulators, including the Fed and the Treasury Department, would benefit from having financial stability added to their mandates, Fischer said today in his first speech since joining the central bank. The panel, known as the Financial Stability Oversight Council, could also be given greater independence to address systemic risks, Fischer, a former governor of the Bank of Israel, said in Cambridge, Massachusetts. [Read more](#).

- **Banks’ Living Wills Get Silent Treatment From U.S. Regulators: July 2, 2014**

This week, for the third time, the biggest U.S. banks have sent regulators detailed plans for their own demise. The regulators’ response to those filings has been far less detailed. The bankruptcy plans, known as living wills, are designed to reassure the public and the market that banks are not “too big to fail” and that they could go bankrupt without damaging the rest of the economy. A group of 11 banks including JPMorgan Chase & Co. (JPM) and Goldman Sachs Group Inc. (GS) had to file a new round of plans yesterday even though they have yet to get a response from regulators on documents from last year. The lack of feedback from the Federal Deposit Insurance Corp. and Federal Reserve has prompted analysts and banking officials to question whether the process is effective. It has also complicated the situation for three systemically important firms that aren’t banks but need to file living wills for the first time this year -- Prudential Financial Inc. (PRU), American International Group Inc. (AIG) and General Electric Co. (GE)’s financial arm. [Read more](#).

## 2. AGENCY RULEMAKING

- **Final Rule: Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules, Futures Commission Merchant and Introducing Broker Conflicts of Interest rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants (79 FR 41126)**
  - **Published:** July 15, 2014
  - **Effective:** July 15, 2014
  - This document contains corrections to final regulations, which were published in the Federal Register of Tuesday, April 3, 2012. The regulations are related to the risk management programs of swap dealers and major swap participants. [Read more.](#)
  
- **Joint Notice and Request for Comment: Proposed Revisions to Risk-Weighted Asset Reporting Under the Agencies' Regulatory Capital Rules (79 FR 35634)**
  - **Published:** June 23, 2014
  - **Comments Due:** August 22, 2014
  - The FDIC, the Federal Reserve Board, and the OCC, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), are requesting comment on proposed revisions to the risk-weighted assets portion of Schedule RC-R, Regulatory Capital, in the Consolidated Reports of Condition and Income (Call Report).
  - As the FFIEC has previously advised, the agencies are proposing to replace existing Part II, Risk-Weighted Assets, of Schedule RC-R with a revised version of Part II that would incorporate the standardized approach for calculating risk-weighted assets under the revised regulatory capital rules approved by the agencies in July 2013 (see FIL-41-2013, dated September 24, 2013, and FIL-3-2014, dated January 22, 2014).
  - The agencies also are proposing to revise the reporting of securities borrowed in Call Report Schedule RC-L, Derivatives and Off-Balance Sheet Items.
  - These proposed changes would take effect as of the March 31, 2015, report date. [Read more.](#)
  
- **Proposed Rule: Fed Proposal to modify regulation for capital planning and stress testing (79 FR 37420)**
  - **Published:** June 12, 2014
  - **Comments Due:** August 11, 2014
  - The Federal Reserve Board invited comment on a proposal to modify the regulations for capital planning and stress testing.
  - The proposed rule would shift the start date of the capital plan and stress test cycles from October 1 of a calendar year to January 1 of the following calendar year. Under the proposed rule, a bank holding company with total consolidated assets of \$50 billion or more would be required to submit its capital plan and stress test results to the Federal Reserve by April 5, three months later than under the current rulemakings. [Read more.](#)
  
- **Final Rule: Regulatory Capital Rules – Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and Their Subsidiary Insured Depository Institutions (79FR 24528)**
  - **Published:** May 27, 2014
  - **Comments Due:** July 28, 2014
  - FSOC Notice and Request for Comments: Proposed Information Collection on Designation of Financial Market Utilities as Systemically Important, pursuant to Section 804 of the Dodd-Frank Act (12 CFR part 1320)
  - The FSOC is soliciting comments concerning its collection of information related to its authority to designate financial market utilities as systemically important. Section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection (the “Dodd-Frank Act”) provides the Council the authority to designate a financial market utility (“FMU”) that the Council determines is or is likely to become systemically important because the failure of or a disruption to the functioning of the FMU could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the United States financial system. [Read more.](#)

- **Proposed Rule: Advanced Approaches Risk-Based Capital Rules, Proposed Revisions to the Definition of Eligible Guarantee (79 FR 24618)**
  - **Published:** May 1, 2014
  - **Effective:** January 1, 2018
  - The OCC, Federal Reserve System (Board), and the FDIC (collectively, the agencies) are adopting a final rule that strengthens the agencies supplementary leverage ratio standards for large, interconnected U.S. banking organizations (the final rule).
  - The final rule applies to any U.S. top-tier bank holding company (BHC) with more than \$700 billion in total consolidated assets or more than \$10 trillion in assets under custody (covered BHC) and any insured depository institution (IDI) subsidiary of these BHCs (together, covered organizations).
  - In the revised regulatory capital rule adopted by the agencies in July 2013 (2013 revised capital rule), the agencies established a minimum supplementary leverage ratio of 3 percent, consistent with the minimum leverage ratio adopted by the Basel Committee on Banking Supervision (BCBS), for banking organizations subject to the agencies advanced approaches risk-based capital rules. [Read more.](#)
  
- **Final Rule: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and Their Subsidiary Insured Depository Institutions (79 FR 24528)**
  - **Published:** May 1, 2014
  - **Effective:** January 1, 2018
  - The OCC, the Fed Board of Governors, and the FDIC are adopting a final rule that strengthens the agencies supplementary leverage ratio standards for large, interconnected U.S. banking organizations.
  - The final rule applies to any U.S. top-tier bank holding company (BHC) with more than \$700 billion in total consolidated assets or more than \$10 trillion in assets under custody and any insured depository institution subsidiary of these BHCs.
  - In the revised regulatory capital rule adopted by the agencies in July 2013, the agencies established a minimum supplementary leverage ratio of 3 percent, consistent with the minimum leverage ratio adopted by the Basel Committee on Banking Supervision, for banking organizations subject to the agencies advanced approaches risk-based capital rules. [Read more.](#)
  
- **Final Rule: Agencies Adopt Enhanced Supplementary Leverage Ratio Final Rule and Issue Supplementary Leverage Ratio Notice of Proposed Rulemaking – OCC (12 CFR Part 6), The Fed (12 CFR Parts 208 & 217), FDIC (12 CFR Part 324)**
  - **Published:** April 8, 2014
  - **Effective Date:** January 1, 2018
  - The Federal Reserve Board, the FDIC, and the OCC adopted a final rule to strengthen the leverage ratio standards for the largest, most interconnected U.S. banking organizations.
  - The final rule applies to U.S. top-tier bank holding companies with more than \$700 billion in consolidated total assets or more than \$10 trillion in assets under custody (covered BHCs) and their insured depository institution (IDI) subsidiaries. [Read more.](#)