

## 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

#### European Commission Publishes Delegated Regulation on OTC Derivative Transactions, CCPs and Trade Repositories

On 13 March 2014, the European Commission published a delegated Regulation on procedures for penalties imposed on trade repositories by the European Securities and Markets Authority (“ESMA”) under the European Market Infrastructure Regulation (“EMIR”). It will now be for the Council of the EU and the European Parliament to consider the delegated Regulation, which will come into force on the third day following publication in the Official Journal of the European Union.

The Regulation is available at:

<http://ec.europa.eu/transparency/regdoc/rep/3/2014/EN/3-2014-1537-EN-F1-1.Pdf>.

### Compensation

#### BoE Releases Consultation Paper Proposing to Extend Remuneration Code

The Bank of England (“BoE”) has released a consultation paper setting out proposals requiring all firms authorized by the Prudential Regulation Authority (“PRA”) to amend employment contracts to ensure that bonus awards which have been vested can be clawed back from individuals. The BoE currently has power to require firms to stop payment of unvested bonuses, though the proposals would further strengthen the Remuneration Code. The consultation closes on 13 May 2014.

The consultation paper is available at:

<http://www.bankofengland.co.uk/pru/Documents/publications/policy/2014/clawbackcp6-14.pdf>.

## Regulatory Capital

### European Commission Adopts Nine Regulatory Technical Standards under CRD IV

The European Commission has adopted nine delegated regulations containing Regulatory Technical Standards (“RTS”) required by the Capital Requirements Directive and the Capital Requirements Regulation (together known as “CRD IV”). The delegated regulations include RTS for:

- assessing the materiality of extensions and changes of the Internal Ratings Based Approach and the Advanced Measurement Approach;
- the definition of market;
- determining what constitutes the close correspondence between the value of an institution’s covered bonds and the value of the institution’s assets;
- specifying the information that competent authorities of home and host Member States supply to one another;
- determining proxy spread and limited smaller portfolios for credit valuation adjustment risk;
- non-delta risk of options in the standardised market risk approach;
- further defining material exposures and thresholds for internal approaches to specific risk in the trading book;
- specifying the classes of instruments that adequately reflect the credit quality of an institution as a going concern and are appropriate to be used for the purposes of variable remuneration; and
- specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk.

The delegated Regulations are available at:

[http://ec.europa.eu/internal\\_market/bank/regcapital/acts\\_en.htm#rts](http://ec.europa.eu/internal_market/bank/regcapital/acts_en.htm#rts).

### European Commission Publishes State of Play and Overview Documents for RTS and ITS Required by CRD IV

The European Commission has published a state of play and overview document for RTS and Implementing Technical Standards (“ITS”) required by CRD IV, as well as a memo on the delegated Regulations adopted. The overview document explains which rules have been adopted, those for which work is still in progress, as well as those for which work has not yet started.

The overview document and memo are available at:

[http://ec.europa.eu/internal\\_market/bank/docs/regcapital/acts/overview-crr-crdiv-rts\\_en.pdf](http://ec.europa.eu/internal_market/bank/docs/regcapital/acts/overview-crr-crdiv-rts_en.pdf);

[http://ec.europa.eu/internal\\_market/bank/docs/regcapital/acts/overview-crr-crdiv-its\\_en.pdf](http://ec.europa.eu/internal_market/bank/docs/regcapital/acts/overview-crr-crdiv-its_en.pdf); and [http://europa.eu/rapid/press-release\\_MEMO-14-181\\_en.pdf](http://europa.eu/rapid/press-release_MEMO-14-181_en.pdf).

### European Commission Delegated Regulation For Own Funds Requirements For Institutions Published in Official Journal

The European Commission delegated Regulation supplementing the Capital Requirements Regulation for own funds requirements for institutions was published in the Official Journal on 14 March 2014. The delegated Regulation will come into force on 2 April 2014.

The delegated Regulation is available at: [http://new.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL\\_2014\\_074\\_R\\_0008\\_01&from=EN](http://new.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_074_R_0008_01&from=EN).

## Financial Market Infrastructure

### BoE Publishes Annual Report on the Supervision of Financial Market Infrastructures

On 17 March 2014, the BoE published its first Annual Report on the supervision of Financial Market Infrastructures (“FMIs”). It is the first such report since the new responsibilities for central counterparties (“CCPs”) and securities settlement systems were assumed by the BoE in April 2013. The report describes how the BoE has exercised its responsibilities in respect of FMI supervision over the past year and sets out areas of focus which include (i) improvements made by CCP’s to their risk management arrangements (including the introduction of new and enhanced margin models); (ii) - plans by UK retail payment systems Bacs and FPS to eliminate settlement risk, through participants prefunding their payments with cash held at the BoE; (iii) -FMI recovery plans to ensure critical services can still operate during times of financial stress; and (iv) the BoE’s work alongside other UK authorities towards meeting the Financial Policy Committee’s recommendation to assess and improve the resilience of the UK financial sector to cyber-attack.

The Annual Report is available at: <http://www.bankofengland.co.uk/publications/Documents/fmi/fmiap1403.pdf>.

## Financial Services

### Council of Europe Adopts Directive on the Freezing and Confiscation of the Proceeds of Crime

On 14 March 2014, the Council of the EU adopted the Directive on the freezing and confiscation of proceeds of crime in the EU. The Directive introduces measures intended to make it easier for national authorities to confiscate and recover the profits made by criminals from cross-border and organised crime. Member States will have two and a half years after the Directive enters in to force to adopt the provisions of the Directive into national law. The UK and Denmark have not opted in to the Directive.

The Press Release is available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/141493.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/141493.pdf).

### ECB Publish Asset Quality Review Phase 2 Manual

On 11 March 2014, the European Central Bank (“ECB”) published the Phase 2 manual on Asset Quality Review. This forms the second phase of the ECB’s Comprehensive Assessment, a process designed to prepare the ECB for its new supervisory role under the single supervisory mechanism. The manual is designed to provide the necessary information required by regulators to execute Phase 2 of the Comprehensive Assessment, involving the review of assets of selected ‘significant’ banks within the EU. Phase 2 will commence after the publication of the ECB’s Asset Quality Review methodology.

The Manual is available at:

<http://www.ecb.europa.eu/pub/pdf/other/assetqualityreviewphase2manual201403en.pdf?e8cc41ce0e4ee40222cbe148574e4af7>.

### Joint ESA Committee Consults on Guidelines on Convergence of Supervisory Practices for Financial Conglomerates

On 12 March 2014, the Joint Committee of the European Supervisory Authorities published a consultation on guidelines on the convergence of supervisory practices relating to the consistency of supervisory co-ordination arrangements for financial conglomerates. The aim of the guidelines is to; (i) clarify and enhance co-operation between the competent authorities on a cross-border and cross-sectoral basis; (ii) supplement the functioning of sectoral colleges (if any) where a cross-border group has been identified as a financial conglomerate; and (iii) enhance the level playing field in the financial market and reduce administrative burdens for firms and supervisory authorities. The deadline for responses is 12 June 2014.

The consultation is available at:

<http://www.esa.europa.eu/documents/10180/624054/JC+CP+2014+02+%28Joint+CP+on+draft+Guidelines+on+supervisory+arrangements+....pdf>.

### HM Treasury Publish Bail-in Powers Consultation and Accompanying Draft Secondary Legislation

On 14 March 2014, HM Treasury published a consultation paper on the implementation of bail-in powers (introduced by the Financial Services (Banking Reform) Act 2013 (the “2013 Act”). The consultation seeks views on the text of the draft secondary legislation listed below which has been published alongside the consultation:

- the Building Societies (Bail-in) Order to facilitate the Bank of England’s bail-in powers in relation to building societies;
- the Banking Act 2009 (Restriction of Special Bail-in Provision, etc.) Order puts in place appropriate safeguards for financial arrangements, in particular certain types of set-off and netting arrangements; and
- the Banking Act 2009 (Mandatory Compensation Arrangements Following Bail-in) Regulations which require certain compensation arrangements to be put into place following the exercise of the bail-in stabilisation option.

The consultation also seeks views on:

- a proposal to align the creditor hierarchies in insolvency for banks and building societies, through early transposition of the depositor preference provisions in the European Bank Recovery and Resolution Directive (“BRRD”). The proposal addresses the current vulnerability of savings in building society share accounts;
- a proposal to implement changes to the Financial Collateral Arrangements Directive; and
- applying the bail-in tool to banking group companies. The government is considering whether it is appropriate to amend the Banking Group Companies Order so that it applies in a different way to the bail-in stabilization option (as compared to the other stabilisation tools), and whether changes will be required to implement BRRD.

The deadline for responses to the consultation is 7 May 2014.

The consultation paper is available at:

<https://www.gov.uk/government/consultations/bail-in-powers-implementation-including-draft-secondary-legislation/bail-in-powers-implementation>.

#### **PRA Publishes Statement of Strategy for 2014/2015**

The PRA has published its Statement of Strategy, as is required under the Financial Services Act 2012, setting out its aims for 2014/2015. The PRA intends to continue to implement the forward-looking, judgement-based regulatory regime, implement changes to domestic, European and international regulation, to influence, devise and implement policy to advance structural reform in banking, resolution policy, the secondary competition objective, and other elements of post-crisis standard setting, to contribute towards delivering the Financial Policy Committee’s macro-prudential objectives, and to ensure the PRA has the right people to meet its statutory objectives, as well as the right infrastructure and governance to meet its statutory objectives.

The Statement of Strategy is available at:

<http://www.bankofengland.co.uk/pradocuments/supervision/stratstate.pdf>.

#### **SEC Proposes Rules for Systemically Important and Security-Based Swap Clearing Agencies**

On 12 March 2014, the Securities and Exchange Commission (“SEC”) voted to propose new rules to enhance the oversight of clearing agencies that are deemed to be systemically important or that are involved in complex transactions, such as security-based swaps. The SEC’s proposal would apply to SEC-registered clearing agencies that have been designated as systemically important by the Financial Stability Oversight Council or that take part in more complex transactions, such as clearing security-based swaps. Clearing agencies covered by the proposed rules would be subject to new requirements regarding their financial risk management, operations, governance, and disclosures to market participants and the public. The proposal would also establish procedures for the SEC to apply the new

requirements to additional clearing agencies. The public will have 60 days to comment on the proposed rules after their publication in the Federal Register.

The full text of the proposed rule is available at:  
<http://www.sec.gov/rules/proposed/2014/34-71699.pdf>.

### **IOSCO Publishes Consultation Report on Regulation of Market Intermediaries**

The Board of the International Organization of Securities Commission has published a Consultation Report entitled “A Comparison and Analysis of Prudential Standards in the Securities Sector”. The report deals with the similarities, differences and gaps among the different frameworks for securities commissions.

The report is available at:  
<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD438.pdf>.

## **Consumer Protection**

### **OCC Adopts Interagency Examination Procedures for Consumer Compliance**

On 14 March 2014, the Office of the Comptroller of the Currency (“OCC”), as a member of the Federal Financial Institutions Examination Council, adopted the interagency examination procedures reflecting new mortgage rules requirements pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act. The mortgage rules procedures were developed and adopted on an interagency basis to promote consistency in the examination process and communication of supervisory expectations. The OCC is in the process of incorporating these new procedures into the Comptroller’s Handbook “Consumer Compliance” series.

The OCC's bulletin on the procedures is available at:  
<http://www.occ.gov/news-issuances/bulletins/2014/bulletin-2014-7.html>.

## **Enforcement**

### **BoE Update on Forex Market Manipulation Investigation**

On 12 March 2014, the BoE published a press release setting out details of the investigation. The investigation, which is to be led by Lord Grabiner QC, will focus on matters relevant to the Financial Conduct Authority’s current investigation into trading on the forex market, in particular, whether any BoE official was involved in, or aware of, any actual or attempted manipulation or confidential client information sharing or other unlawful or improper behaviour or practices in the forex market.

The press release is available at:  
<http://www.bankofengland.co.uk/publications/Pages/news/2014/052.aspx>.

## People

### CFPB Names Key Senior Positions

On 12 March 2014, the Consumer Financial Protection Bureau (“CFPB”) announced that three experts have been named to senior positions within the CFPB:

- Christopher D. Carroll has joined the CFPB as the Assistant Director and Chief Economist for the Office of Research in the Bureau’s Research, Markets, and Regulations Division;
- Daniel Dodd-Ramirez has joined the CFPB as the Assistant Director of Financial Empowerment in the CFPB’s Consumer Education and Engagement Division; and
- Jeffrey Langer has joined the CFPB as the Assistant Director of Installment and Liquidity Lending Markets in the CFPB’s Research, Markets, and Regulations Division.

## Events

### CFTC Staff to Host a Public Roundtable to Discuss Risk Management Practices by Commodity Pool Operators

On 11 March 2014, the Commodity Futures Trading Commission (“CFTC”) announced that staff will hold a public roundtable on 18 March 2014 to discuss risk management practices by Commodity Pool Operators. The roundtable will focus on the use of risk management procedures in the operation of various types of commodity pools, including registered investment companies, public commodity pools, private funds, and funds of funds. Discussion will include risk management controls relating to investment risk, operational risk, and compliance or regulatory risk.

More information on the CFTC roundtable is available at:  
<http://www.cftc.gov/PressRoom/PressReleases/pr6879-14>.

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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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