SHEARMAN & STERLING LLP

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Financial Regulatory Developments Focus

In this issue:

In this newsletter, we provide a snapshot of the principal European, U.S. and global financial regulatory developments of interest to banks, investment firms, broker-dealers, market infrastructures, asset managers and corporates.

Bank Prudential Regulation & Regulatory Capital

U.S. Federal Agencies Jointly Release Final Risk Retention Rule

On October 23, 2014, six federal agencies – the U.S. Securities and Exchange Commission ("SEC"), Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System ("Federal Reserve Board"), Federal Deposit Insurance Corporation ("FDIC"), Department of Housing and Urban Development ("HUD") and the Federal Housing Finance Agency ("FHFA") – jointly adopted final risk retention rules imposing 5% risk retention, or "skin-in-the-game," requirements for securitizations.

The final rule exempts securitizations of "qualified residential mortgages" ("QRMs") from the risk retention requirement and does not require QRMs to include a minimum down payment. Nevertheless, the new rules, when they become effective over the next two years, will impose significant new costs and obligations on a wide range of securitization structures. In particular, the final risk retention rules are expected to affect transaction structures, disclosure requirements, origination standards for new assets and the relative responsibilities of sponsors, originators, managers and trustees in securitization transactions, among other matters.

For more details, you may like to read our client memo: http://www.shearman.com/~/media/Files/NewsInsights/Publications/2014/10/Credit-Risk-Retention-Rules-Finalized-DSP-102314.pdf.

The draft final rules are available at: http://www.federalreserve.gov/aboutthefed/boardmeetings/bcreg20141022a1.pdf.

Federal Reserve Board Releases Supervisory Scenarios for 2015 CCAR Tests

On October 23, 2014, the Federal Reserve Board released supervisory scenarios for use in the 2015 capital planning and stress testing program, namely the Comprehensive Capital Analysis and Review ("CCAR"). The supervisory scenarios will apply to 31 bank holding companies with over $50 billion in consolidated assets and comes on the heels of recently issued final rules modifying the capital plan and stress test regulations. The Fed presents three supervisory scenarios (baseline, adverse and severely adverse) that will take into account 28 variables including, but not limited to, economic activity, unemployment and interest rates. The adverse and severely adverse scenarios are designed to test the resilience of banking institutions to stressed economic environments.

Banks will be required to use the 2015 supervisory scenarios for both the CCAR and the annual stress tests required by the Dodd–Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") as a complementary exercise to CCAR. The Federal Reserve Board plans to provide further data regarding the 2015 global market shock scenario to be used by six bank holding companies with large trading positions on or before December 1, 2014. Capital plans must be submitted by January 5, 2015. Additionally, the OCC and FDIC have recently released economic scenarios to be used for stress tests required under Dodd-Frank.

The 2015 supervisory scenarios are available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20141023a1.pdf, the FDIC press release for the 2015 supervisory scenarios is available at: https://www.fdic.gov/news/news/press/2014/pr14087.html and the OCC press release for the 2015 supervisory scenarios is available at: http://www.occ.gov/news-issuances/news-releases/2014/nr-occ-2014-141.html.

ECB Comprehensive Assessment Results Announced

On October 26, 2014, the European Central Bank ("ECB") published its report on the results of the comprehensive assessment of 130 of the largest banks in the Eurozone as of December 31, 2013. The ECB identified 25 banks with capital shortfalls, totaling €25 billion. The banks are established in Austria (1 bank), Belgium (2 banks), Cyprus (3 banks), France (1 bank), Germany (1 bank), Greece (3 banks), Ireland (1 bank), Italy (9 banks), Portugal (1 bank), Slovenia (2 banks), and Spain (1 bank). The comprehensive assessment included an asset quality review and a forward-looking stress test of the banks and was undertaken before the ECB assumes its prudential supervisory role under the Single Supervisory Mechanism ("SSM") on November 4, 2014.

The ECB announcement is available at: https://www.ecb.europa.eu/press/pr/date/2014/html/pr141026.en.html.

ECB Proposed Extending Scope of Financial Reporting Requirements for SSM Banks

On October 23, 2014, the ECB launched a consultation on its proposed regulation on the reporting of supervisory financial information under the SSM. The ECB is proposing to extend the current supervisory financial requirements to all banks within the SSM to capture consolidated and solo entity reports of banks under national accounting frameworks (referred to by the ECB as "National GAAPs"). The current supervisory financial reporting requirement, as set out on the implementing technical standards ("ITS") on supervisory reporting under the

Capital Requirements Regulation ("CRR"), only applies to banks applying International Financial Reporting Standards at a consolidated level. The ECB is proposing reduced reporting requirements for less significant banks under its remit, together with an extended timeline for implementation. Responses to the consultation are due by December 4, 2014.

The consultation paper is available at: https://www.ecb.europa.eu/ssm/consultations/shared/pdf/reporting/draft-ssm-reporting-regulation201410.en.pdf?7cc46a044c7e1f1f0a7434576a3e1212.

Revised List of ITS Validation Rules Issued by EBA

On October 22, 2014, the European Banking Authority ("EBA") published a revised list of validation rules for submitting data in its ITS on supervisory reporting. These rules detail the standards and formats that are to be used for submissions of data by national regulators under the Capital Requirements Directive and CRR, together known as CRD IV. The revised list displays the rules that have been deactivated due to technical issues.

The EBA press release and updated validation rules are available at: http://www.eba.europa.eu/-/eba-issues-revised-list-of-its-validation-rul-2.

Derivatives

CFTC Staff Issues Interpretative Guidance Regarding Customer Margin Deposits

On October 23, 2014, the U.S. Commodity Futures Trading Commission's ("CFTC") Division of Swap Dealer and Intermediary Oversight issued an interpretation disclosing that a futures commission merchant ("FCM") may credit a customer's futures, foreign futures, and/or cleared swaps trading account for a margin payment upon the FCM's initiation of a withdrawal from the customer's bank account using the Automated Clearing House ("ACH") transaction system. A written agreement between the customer and the FCM would authorize the FCM to institute an ACH transaction to withdraw funds from the customer's bank account to meet a margin call. CFTC regulations do not require an FCM to delay crediting the relevant customer's trading account until the check clears such customer's bank account.

The interpretation pertains to CFTC regulations 1.22, 22.2 and 30.7 and is aligned with a previous staff interpretation regarding the FCM's procedure for recording checks deposited by customers for margin payments.

The CFTC staff letter is available here: http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-129.pdf.

Recovery & Resolution

Bank of England Details its Approach to Resolution under the BRRD

On October 23, 2014, the Bank of England ("BoE") published a document setting out its approach to the resolution in practice of banks, building societies and certain investment firms, including their parent and group companies. The document details the BoE's approach to resolution from January 1, 2015, which is when most of the provisions of the Banking Recovery and Resolution Directive will come into force. The BoE's approach covers choosing a resolution strategy and conducting a resolution, from the stabilization phrase, to the restructuring phrase through to exit, including transfers and bail-in options. The document does not set out the BoE's approach to resolution of central counterparties, which the BoE confirms will be set out in separate documentation.

The document is available at: http://www.bankofengland.co.uk/financialstability/Documents/resolution/apr231014.pdf.

People

Juncker Commission Elected by European Commission

On October 22, 2014, the European Parliament supported the new European Commission which will start its term of office on November 1, 2014 under President-elect Jean-Claude Juncker.

Lord Hill Confirmed as EU Commissioner for Financial Services

On October 22, 2014, Lord Jonathan Hill was approved as the EU commissioner for financial services as part of the Juncker Commission, which will start its term of office on November 1, 2014.

Events

On November 3, 2014, the CFTC will hold an open meeting to consider the residual interest deadline, records of commodity interest and related cash or forward transactions, and forward contracts with embedded volumetric optionality.

This newsletter 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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