

Financial Regulatory Developments Focus



In this issue:

Derivatives

Regulatory Capital

Financial Services

Market Infrastructure

Enforcement

Financial Crime

Events

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

Derivatives

CFTC Further Implements Trade Execution Mandate

On 1 May 2014, the Commodity Futures Trading Commission's ("CFTC") Divisions of Market Oversight ("DMO") and Clearing and Risk ("DCR") announced further implementation of the trade execution requirement for certain interest rate and credit default swaps. Beginning 16 May 2014, market participants executing swaps subject to the trade execution requirement that are part of a so-called "package transaction" must be traded on a Swap Execution Facility ("SEF") or Designated Contract Market ("DCM"), pursuant to a phased compliance timeline. DMO previously provided no-action relief for certain swaps that otherwise were required to be traded on a SEF or DCM to the extent that those swaps were part of a package transaction.

The full text of the CFTC no-action relief is available at:

<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-62.pdf>.

Regulatory Capital

Mapping of Credit Rating Agencies' Credit Assessments

On 29 April 2014, the European Banking Authority ("EBA") updated its webpage on the consultation on implementing technical standards ("ITS") on the mapping of External Credit Assessment Institutions ("ECAIs") credit assessments by extending the deadline for responses to the consultation from 5 May 2014 to 20 June 2014. The ITS include proposed mapping for all credit rating agencies registered under the EU Credit Rating Agency Regulation. The ITS are mandated under the Capital Requirements Regulation and the EBA is due to provide final draft ITS to the European Commission by 1 July 2014.

The webpage is available at: <http://www.eba.europa.eu/regulation-and-policy/external-credit-assessment-institutions-ecai/draft-implementing-technical-standards-on-the-mapping-of-eca-is-credit-assessments>.

EBA Publishes Action Plan for Colleges of Supervisors

On 28 April 2014, the EBA published a report entitled “Accomplishment of the Colleges Action Plan for 2013 and establishment of the Colleges Action Plan for 2014.” Colleges of supervisors are established for all cross-border banking groups established in the EEA. The report highlights areas where improvement of co-operation within the colleges is needed and sets out the action plan for 2014. Key issues in 2014 include joint risk assessment, decisions on capital and liquidity, assessment of recovery plans and asset quality review.

The report is available at:

<http://www.eba.europa.eu/documents/10180/15920/Accomplishment+of+Action+Plan+2013+and+Action+Plan+for+2014.pdf>.

EBA Publishes Information on 2014 EU-wide Bank Stress Test

On 29 April 2014, the EBA published its methodology and the scenarios for the EU-wide stress test to be conducted on a sample of 124 EU banks (covering at least 50% of each national banking sector). The methodology will be used by all national regulators to ensure that the main EU banks are all assessed against common assumptions, definitions and approaches. The outcome should be comparable results across the EU. The macroeconomic scenarios, developed by the European Systemic Risk Board, will be used to assess the impact that changes in the economic environment have on EU banks.

The announcement and documents are available at: <http://www.eba.europa.eu/-/eba-publishes-common-methodology-and-scenario-for-2014-eu-banks-stress-test>.

ECB Announces Deadlines for Banks to Cover Capital Shortfalls Identified in the Comprehensive Assessment

On 29 April 2014, the European Central Bank (“ECB”) announced that where the results of the comprehensive assessment show that a bank has a capital shortfall, the bank will be required to remedy the shortfall within a set deadline. The deadline for shortfalls identified in the asset quality review (“AQR”) or the baseline stress test scenario is six months from the date of disclosure of the results of the comprehensive assessment. The deadline for shortfalls identified in the adverse stress test scenario is nine months from the date of the disclosure of the results of the comprehensive assessment. The results of the comprehensive assessment are expected in October 2014. Capital shortfalls under the AQR or baseline stress test scenario must be met by Common Equity Tier 1 capital. Shortfalls from the adverse stress test scenario can be covered in other ways but the use of convertible capital instruments is limited. The comprehensive assessment, announced by the ECB in 2013 as part of its preparation for assuming responsibility for the prudential supervision of Eurozone banks under the Single Supervisory Mechanism, comprises the AQR and the EBA stress test. The ECB is due to assume its new responsibilities in November 2014.

The ECB announcement is available at:

http://www.ecb.europa.eu/press/pr/date/2014/html/pr140429_1.en.html.

Bank of England Releases Details of UK Stress Test

On 29 April 2014, the Bank of England (“BoE”) released the details of the UK stress test for the eight major UK banks and building societies – Barclays, Co-operative Bank, HSBC, Lloyds Banking Group, Nationwide, Royal Bank of Scotland, Santander UK and Standard Chartered. The UK stress test will be run alongside the EU-wide stress test but will add variants to explore vulnerabilities particular to the UK banking system. The Prudential Regulation Authority (“PRA”) will require any bank which falls below the UK stress test threshold (4.5% of risk weighted assets to be met with Common Equity Tier 1 capital under stress) to take action. The results of the UK stress test will be published after the results of the EU-wide stress test.

The BoE announcement is available at:

<http://www.bankofengland.co.uk/publications/Pages/news/2014/071.aspx>.

PRA Publishes Rules and Supervisory Statement on Capital Buffers

On 30 April 2014, the PRA published its policy statement on implementation of the provisions on capital buffers in the Capital Requirements Directive. The policy statement includes feedback to the PRA’s consultation paper and final rules. The PRA also published its Supervisory Statement on the rules which aims to explain the PRA’s expectations of banks, building societies and PRA-designated investment firms regarding capital buffers.

The PRA webpage is available at:

<http://www.bankofengland.co.uk/pr/Pages/publications/capitalbuffers.aspx>.

Federal Agencies Propose Revisions to the Supplementary Leverage Ratio

On 1 May 2014, the Office of the Comptroller of the Currency (“OCC”), the Board of Governors of the Federal Reserve System (“Federal Reserve Board”) and the Federal Deposit Insurance Corporation (“FDIC”) (collectively, “the agencies”) announced a notice of proposed rulemaking that would revise the calculation of total leverage exposure in a manner generally consistent with revisions to the international leverage ratio framework published by the Basel Committee on Banking Supervision in January 2014. The supplementary leverage ratio applies to all banking organizations subject to the agencies’ advanced approaches risk-based capital framework. The supplementary leverage ratio is the ratio of a banking organization’s tier 1 capital to its total leverage exposure, which includes all on-balance-sheet assets and many off-balance-sheet exposures. The most significant changes proposed relate to the treatment of written credit derivatives and the application of credit conversion factors to the amount of certain off-balance-sheet items. The comment period for this notice of proposed rulemaking ends on 13 June 2014.

The full text of the notice of proposed rulemaking is available at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-01/pdf/2014-09357.pdf>.

Federal Agencies Adopt Final Rule on Enhanced Supplementary Leverage Ratio

On 1 May 2014, the OCC, the Federal Reserve Board and the FDIC announced the adoption of a final rule to strengthen the supplementary leverage ratio standards for the largest, most systemically significant US banking organizations. The final rule applies to any bank holding company (“BHC”) with more than \$700 billion in consolidated total assets or \$10 trillion in assets under custody (“covered BHC”) and any insured depository institution (“IDI”) subsidiary of these covered BHCs (“covered IDI”). Concurrent with this final rule, the agencies have issued a proposal to revise the calculation of total leverage exposure (the denominator of the supplementary leverage ratio) in a manner generally consistent with revisions to the international leverage ratio framework published by the Basel Committee on Banking Supervision in January 2014. Banking organizations subject to the enhanced supplementary leverage ratio requirements are required to calculate and publicly report their supplementary leverage ratios beginning in the first quarter of 2015. The supplementary leverage ratio requirements are not effective until 2018.

The full text of the final rule is available at: <http://www.gpo.gov/fdsys/pkg/FR-2014-05-01/pdf/2014-09367.pdf>.

Federal Agencies Propose Revisions to the Risk-Based Capital Definition of Eligible Guarantee for Advanced Approaches Banks

On 1 May 2014, the OCC, the Federal Reserve Board and the FDIC announced a notice of proposed rulemaking that would revise the advanced approaches risk-based capital rules by removing the requirement that only guarantees provided by certain counterparties are eligible for recognition as credit risk mitigants. Specifically, the notice of proposed rulemaking would modify the definition of “eligible guarantee” for purposes of the advanced approaches risk-based capital rules by removing the requirement that an eligible guarantee be provided by an “eligible guarantor” for all exposures other than securitization exposures. The comment period for the proposed rule ends on 13 June 2014.

The full text of the notice of proposed rulemaking is available at: <http://www.gpo.gov/fdsys/pkg/FR-2014-05-01/pdf/2014-09452.pdf>.

Financial Services

ECJ Rejects UK Government’s Case for Annulment of FTT

On 30 April 2014, the European Court of Justice rejected the UK Government’s application for the annulment of the Council Decision authorizing enhanced cooperation in the area of financial transaction tax (“FTT”). The UK Government claimed that the Decision would have extraterritorial effect and result in costs for non-participating states. The eleven participating EU member states (Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia) have until the EU May elections to reach a compromise for implementing FTT.

The decision is available at: http://curia.europa.eu/juris/document/document_print.jsf;jsessionid=9ea7d0f130d

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oclang=EN&text=&pageIndex=0&part=1&mode=DOC&docid=151529&occ=firs
t&dir=&cid=217403.](http://www.fca.org.uk/news/fca-independent-directors-publish-protocol-and-updated-terms-of-reference)

Update on the Independent Investigation into FCA Announcement

On 2 May 2014, the non-executive directors of the Financial Conduct Authority (“FCA”) published updated Terms of Reference and the Protocol for the independent investigation into the handling of the FCA’s announcement of proposed supervisory work on the fair treatment of long standing customers in life insurance. The Protocol establishes the procedures for the investigation.

The announcement is available at: <http://www.fca.org.uk/news/fca-independent-directors-publish-protocol-and-updated-terms-of-reference>.

Joint Forum Publishes Recommendations for Point of Sale Disclosure in the Insurance, Banking and Securities Sectors

On 30 April 2014, the Joint Forum published a report on the differences to point of sale disclosure in investment or savings products in the insurance, banking and securities sectors, including recommendations for aligning those disclosure requirements across the different sectors. The Joint Forum is made up of the Basel Committee on Banking Standards, the International Association of Securities Commissions and the International Association of Insurance Supervisors. The recommendations are intended as guidance to regulators that are considering developing or reviewing their point of sale disclosure requirements.

The report is available at: <http://www.bis.org/publ/joint35.pdf>.

Market Infrastructure

FCA Publishes Policy Statement on New Rules on Competition for Exchanges

On 2 May 2014, the FCA published its final new rules on competition for recognized investment exchanges (“RIEs”) and recognized overseas investment exchanges (“ROIEs”). The rules will affect RIEs, ROIEs, users of the facilities of trading infrastructures and suppliers of services to the markets in which RIEs and ROIEs operate. The new rules set out how the FCA intends to exercise its powers to advance its competition objective and its duty to promote effective competition in the interests of consumers. The new rules come into effect on 2 June 2014.

The Policy Statement is available at:

<http://www.fca.org.uk/static/fca/documents/policy-statements/competition-in-markets-services-provided-recognised-investment-exchange.pdf>.

Enforcement

SEC Issues Partial Stay of Conflict Minerals Rules

On 2 May 2014, the Securities and Exchange Commission (“SEC”) issued an order staying the effective date for compliance with the portions of Exchange Act Rule 13p-1 and Form SD that would require statements by issuers that the Court of Appeals held would violate the First Amendment. In its order, the SEC denied

the motion filed by the National Association of Manufacturers, Chamber of Commerce, and Business Roundtable for a stay of the entire rule.

The full text of the SEC order of partial stay is available at:

<http://www.sec.gov/rules/other/2014/34-72079.pdf>.

Financial Crime

SFO Opens Criminal Investigation relating to Ukraine

On 28 April 2014, the UK's Serious Fraud Office ("SFO") announced that a criminal investigation into possible money laundering arising from suspicions of corruption in Ukraine had been opened. The SFO has obtained a restraint order freezing approximately \$23 million of assets in the UK.

The press release is available at: <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/money-laundering-investigation-opened.aspx>.

EU Directive on Freezing and Confiscation of Proceeds of Crime Comes into Force

On 29 April 2014, the Directive on the freezing and confiscation of instrumentalities and proceeds of crime in the EU was published in the Official Journal of the European Union. The Directive comes into force on the twentieth day following such publication and member states have until 4 October 2015 to implement the provisions into national laws.

The Directive is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2014:127:FULL&from=EN>.

Events

8 May 2014: US House of Representatives Committee on Financial Services hearing entitled "The Annual Testimony of the Secretary of the Treasury on the State of the International Financial System."

19 May 2014: EBA public hearing on Guidelines on the convergence of supervisory practices for financial conglomerates.

21 or 22 May 2014: FCA Transaction Reporting Forum aimed at attendees from FCA regulated firms with responsibility for transaction reporting.

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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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