

Financial Regulatory Developments Focus



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

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The quarterly European Governance & Securities Law Focus newsletter is available [here](#).

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Bank Prudential Regulation & Regulatory Capital

US Board of Governors of the Federal Reserve System Proposes New Rule to Implement TLAC and Related Requirements

On October 30, 2015, the US Board of Governors of the Federal Reserve System proposed a rule, in consultation with the US Federal Deposit Insurance Corporation, requiring the largest US Global Systemically Important Banking Organizations (known as G-SIBs) and the US Intermediate Holding Companies of foreign G-SIBs to maintain a minimum amount of unsecured long-term debt and a minimum amount of “Total Loss-Absorbing Capacity” as a percentage of total risk-weighted assets. Generally, TLAC is intended to increase the resiliency of an organization by providing a significant capital buffer comprised of regulatory capital and certain eligible debt, together with related capital buffers. The long-term debt, once converted to equity, is aimed at absorbing losses and recapitalizing the covered entity's subsidiaries in resolution. There are four major components of the proposed rule: (i) external long-term debt and related TLAC requirements applicable to the top holding company of a US G-SIB; (ii) internal long-term debt and related TLAC requirements applicable to covered US IHCs; (iii) clean holding company requirements; and (iv) regulatory capital deductions applicable to certain investments in long term debt of covered G-SIBs. Additionally, the Federal Reserve Board is requesting comment on internal TLAC requirements for US G-SIBs. Once finalized, the rules would apply to 8 US G-SIBs and their related entities as well as IHCs controlled by non-US G-SIBs. Banking organizations covered by the rule would be required to comply with most of the proposed requirements by January 1, 2019. The calibration of the risk-weighted assets component of the external TLAC requirement would be phased in over a three-year period commencing on January 1, 2019.

The proposed rulemaking is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20151030a1.pdf>.

US Comptroller of the Currency Highlights Increasing Credit Risk

On November 2, 2015, the US Comptroller of the Currency, Thomas J. Curry, once more discussed the issue of increased credit risk confronting the federal banking system during the Risk Management Associations' Annual Risk Management Conference. He argued that credit quality issues are a rising concern because banks are beginning to increase their risk appetite and are taking on additional credit risk. He notes that credit risk is increasing in two forms: relaxed credit underwriting and increased loan concentrations. In his statement, Comptroller Curry recommended that banks take initiative to address concentration risk on their own and also review more closely their loan loss allowance levels to determine whether it is appropriate in relation to the level of credit risk within the bank's loan portfolio.

The text of Comptroller Curry's remarks is available at: <http://www.occ.gov/news-issuances/speeches/2015/pub-speech-2015-147.pdf>.

Competition

UK Competition and Markets Authority Proposes Remedies for Retail Banking Competition Issues

On October 28, 2015, the Competition and Markets Authority published a report setting out its provisional findings related to its investigation into the supply of Personal Current Accounts and banking services to Small and Medium-sized Enterprises. The report identifies several competition issues in the PCA and SME banking market, including: (i) small numbers of customers switching to different bank accounts due to banks not being under sufficient competitive pressure to attract customers; (ii) new banks and new products not attracting new customers; and (iii) high numbers of SMEs holding their business accounts in the same banks as their PCAs, with low levels of switching. The report also states that customers that are holders of more expensive accounts are not switching to better value and better quality cheaper accounts, which would be expected in a well-functioning market. The CMA is proposing remedies which include: (i) requiring banks to prompt customers to review the service they receive by receiving individual

messages at certain “trigger points”; (ii) encouraging consumers and businesses to compare bank products by using Midata, an industry online tool, that allows consumers to easily access their banking data and compare it with other services; and (iii) creating a price comparison service for SMEs. Responses to the report are invited by November 20, 2015. The CMA also announced that it intends to review the undertakings put in place after the 2002 Competition Commission review into PCA banking in Northern Ireland and into SME banking generally.

The CMA's report is available at: <https://www.gov.uk/government/news/cma-proposes-better-deal-for-bank-customers>.

Derivatives

US Federal Agencies Jointly Issue Final Rules on Swap Margin Requirements

On October 30, 2015, the Farm Credit Administration, the FDIC, the Federal Housing Finance Agency, the Federal Reserve Board and the Office of the Comptroller of the Currency jointly issued a final rule establishing margin requirements for uncleared swaps. The FDIC and OCC had previously approved the final rule on October 22, 2015. The rule will apply to swap dealers, security-based swap dealers, major swap participants and major security-based swap participants supervised by the aforementioned agencies and registered with the US Commodity Futures Trading Commission or the Securities and Exchange Commission. Sections 731 and 764 of the Dodd-Frank Act require the agencies to establish capital and margin requirements for registered swap dealers, major swap participants, security-based swap dealers and major security-based swap participants in order to address the risks to such entities and the financial system from non-cleared derivatives. Specifically, the final rule requires that initial and variation margin be exchanged between covered swap entities and certain counterparties in connection with non-cleared swaps and security-based swaps. The rule also specifies how margin is to be calculated, what types of margin are eligible and how margin is to be held. Additionally, the agencies approved an interim final companion rule to the joint final rule establishing swap margin requirements. As required under a 2015 statute, the interim final rule exempts from the new margin requirements certain non-cleared swaps and non-cleared security-based swaps with certain counterparties that qualify for an exemption from clearing under the Dodd-Frank Act (including certain commercial end-users engaged in hedging activity). The final rule contains certain other exceptions, including for financial institutions with \$10 billion or less in total assets that specifically use swaps for hedging. Both the final rule and interim final rule will be effective April 1, 2016. The final rule will be phased in from September 1, 2016 to September 1, 2020.

The final rule is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20151030b1.pdf>.

The interim final rule is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20151030b2.pdf>.

The OCC press release is available: <http://www.occ.treas.gov/news-issuances/news-releases/2015/nr-occ-2015-142.html>.

The statement by FDIC Chairman Martin J. Gruenberg is available at:
<https://www.fdic.gov/news/news/speeches/spoct2215a.html>.

The statement by FDIC Vice Chairman Thomas M. Hoenig is available at:
<https://www.fdic.gov/news/news/speeches/spoct2215.html>.

Financial Services

Financial Stability Board Report on Reporting Financial Transactions to Trade Repositories in the Americas

On October 30, 2015, the Financial Stability Board's Regional Consultative Group for the Americas issued a report on financial institutions potentially reporting financial transactions to trade repositories on a cross-jurisdictional basis. The report specifically discusses FSB findings on current practices for reporting financial transactions to trade repositories or similar entities as well as identifying the best practices for reporting financial transactions.

The FSB press release and consultative paper are available at: <http://www.financialstabilityboard.org/2015/10/reporting-financial-transactions-to-trade-repositories-in-the-americas> and <http://www.financialstabilityboard.org/wp-content/uploads/Reporting-Financial-Transactions-to-Trade-Repositories-in-the-Americas.pdf>.

Recovery & Resolution

European Banking Authority Consults on Draft Guidelines for Disclosure of Confidential Information under Bank Recovery and Resolution Directive

On October 27, 2015, the European Banking Authority published a consultation paper on the draft Guidelines on the disclosure of confidential information in summary or collective form under the Bank Recovery and Resolution Directive. The BRRD prohibits the disclosure of confidential information received by national regulators, resolution authorities, the EBA, central banks and government ministries as well as potential acquirers, bridge institutions and others involved in the resolution of a financial institution unless such disclosure is in the exercise of their functions under the BRRD, or is made with the express and prior consent of the authority or institution providing the information or the information is in summary or collective form which does not identify the individual institution or entities. The EBA's proposed Guidelines specify how confidential information in a summary or collective form must be disclosed, requiring that the information is: (i) in an anonymized format; (ii) relates to a minimum of three entities subject to certain exceptions; and (iii) avoids making reference to specific characteristics, distinctive features or other qualitative data that would identify specific firms. The draft Guidelines are expected to apply from February 2016. Comments on the proposed Guidelines are due by January 27, 2016.

The consultation paper is available at: <http://www.eba.europa.eu/documents/10180/1248087/EBA-CP-2015-18+CP+on+GL+on+information+provided+under+BRRD.pdf>.

Financial Stability Board Issues New Measures to Promote Resolvability

On November 3, 2015, the FSB issued two finalized guidance papers and three consultation papers promoting new measures to support its financial institution resolution and recovery regime and ending "too-big-to-fail." The two finalized guidance papers discuss principles for cross-border resolution strategies. The consultation papers discuss temporary funding and operational continuity needed to support the resolution of a Global Systemically Important Financial Institution as well as the development of effective resolution strategies.

The FSB press release is available at: <http://www.financialstabilityboard.org/wp-content/uploads/Resolution-consultation-press-release.pdf>.

The finalized guidance paper on Principles for Cross-border Effectiveness of Resolution Actions is available at: <http://www.financialstabilityboard.org/wp-content/uploads/Principles-for-Cross-border-Effectiveness-of-Resolution-Actions.pdf>.

The finalized guidance paper on Guidance on Cooperation and Information Sharing with Host Authorities of Jurisdictions where a G-SIFI has a Systemic Presence that are Not Represented on its Crisis Management Groups is available at: <http://www.financialstabilityboard.org/wp-content/uploads/Guidance-on-cooperation-with-non-CMG-hosts.pdf>.

The consultative document on Temporary Funding Needed to Support the Orderly Resolution of a Global Systemically Important Bank is available at: <http://www.financialstabilityboard.org/wp-content/uploads/Funding-in-Resolution-Guiding-Principles-Consultative-Document.pdf>.

The consultation paper on Guidance on Arrangements to Support Operational Continuity in Resolution is available at: <http://www.financialstabilityboard.org/wp-content/uploads/Guidance-on-Arrangements-to-Support-Operational-Continuity-in-Resolution.pdf>.

The consultation paper on Developing Effective Resolution Strategies and Plans for Systemically Important Insurers is available at: <http://www.financialstabilityboard.org/wp-content/uploads/Developing-Effective-Resolution-Strategies-and-Plans-for-Systemically-Important-Insurers.pdf>.

Securities

US Securities and Exchange Commission Adopts Rules to Permit Crowdfunding

On October 30, 2015, the US SEC issued final rules providing a framework of regulation to allow companies to offer and sell securities through crowdfunding. Concurrent with the adoption of the final rule, the SEC also proposed amendments to Rule 147 and Rule 504 of the Securities Act of 1933, as amended, to facilitate intrastate and regional offerings. The proposed amendments to Rule 504 of the Securities Act would increase the aggregate amount that may be offered and sold pursuant to the rule from \$1 million to \$5 million and apply bad actor disqualifications to Rule 504 offerings. The final rules enable individuals to purchase securities in crowdfunding offerings, subject to certain limits. Specifically, the rules: (i) allow a company to raise up to a maximum aggregate amount of \$1 million through crowdfunding offerings in a 12-month period; (ii) permit individual investors to invest in crowdfunding offerings, subject to specified limits over a 12-month period; and (iii) limit the aggregate amount of securities sold to an investor during any 12-month period to an amount not to exceed \$100,000. In addition, companies that conduct crowdfunding offerings must, pursuant to the adopted rules, make certain disclosures about their business as well as the offering. The adopted crowdfunding rules and forms will be effective 180 days after publication in the Federal Register and the forms permitting funding portals to register with the SEC will be effective January 29, 2016. Public comments on the proposed amendments to Rule 147 and Rule 504 are open for a 60-day period following their publication in the Federal Register.

The text of the SEC proposed and final rules are available at: <http://www.sec.gov/rules/final/2015/33-9974.pdf> and <http://www.sec.gov/rules/proposed/2015/33-9973.pdf>.

Shadow Banking

Financial Stability Board Issues Second Report on Shadow Banking in the Americas

On October 30, 2015, the FSB Regional Consultative Group for the Americas issued its second report regarding shadow banking activities in the Americas. Three potential areas of importance were considered: (i) non-bank credit intermediation (via finance companies, credit card companies, etc.); (ii) non-bank deposit-taking institutions; (iii) and the nature and size of shadow banking in International Financial Centers. Some notable results from report found that: (i) banks still control a majority of financial activities in the Americas but their share of financial assets has been declining from 2008; (ii) the largest sub-sector of other financial intermediaries is investment funds; and (iii) the offshore assets of IFCs in the Americas are significant at \$4.6 trillion USD.

The report is available at: <http://www.financialstabilityboard.org/wp-content/uploads/Working-Group-on-Shadow-Banking-Second-Report.pdf>.

People

Financial Action Task Force Appoints New Executive Secretary

Mr. David Lewis was appointed Executive Secretary of the Financial Action Task Force as of November 1, 2015.

Upcoming Events

November 5, 9 and 11, 2015: Financial Conduct Authority workshop for Credit Unions: Senior Managers and Certification Regimes Improving Individual Accountability.

November 11, 2015: Bank of England Open Forum.

November 13, 2015: EBA public hearing on harmonized definition of default under the CRR.

November 18 and 19, 2015: EBA Fourth Annual Research Workshop: Financial Regulation and the Real Economy: A Micro Prudential Perspective.

November 20, 2015: EBA workshop on implementing EBA Guidelines on methods for calculating contributions to Deposit Guarantee Schemes (registration by invitation only).

December 14, 2015: European Commission conference on the impact of the Capital Requirements Regulation and Capital Requirements Directive on Bank Financing of the Economy.

December 15, 2015: EBA public hearing on proposed Guidelines on anti-money laundering and countering the financing of terrorism.

January 5, 2016: EBA public hearing on draft Guidelines on communication between national regulators supervising credit institutions and their auditors.

January 13, 2016: EBA public hearing on disclosure of confidential information in summary or collective form under the BRRD (registration closes on December 23, 2015.).

Upcoming Consultation Deadlines

November 9, 2015: FCA Consultation on Part I of Implementation of UCITS V Directive.

November 16, 2015: Regulatory Oversight Committee Proposals to Include Branch Data into the Global Legal Entity Identifier System.

November 20, 2015: CMA Provisional Findings on the Retail Banking Market.

December 7, 2015: FCA Consultation on Part III of Implementation of UCITS V Directive.

December 7, 2015: Prudential Regulation Authority and FCA Consultation on Regulatory References.

December 7, 2015: Committee on Payments and Market Infrastructures Consultation on Correspondent Banking Reforms.

December 17, 2015: HM Treasury consultation on legislative amendments to implement the Undertakings for Collective Investments in Transferable Securities V Directive.

December 22, 2015: FCA and HM Treasury Consultation on Public Financial Guidance.

December 22, 2015: FCA and HM Treasury Call for Input on Improving Access to Financial Advice for Consumers.

December 24, 2015: European Securities and Markets Authority consultation on Regulatory Technical Standards for the European Single Electronic Format under the Transparency Directive.

January 6, 2016: European Commission Consultation on EU Covered Bond Framework.

January 6, 2016: European Commission Consultation on EU Venture Capital Investment Funds Regulation and European Social Entrepreneurships Funds Regulation.

January 14, 2015: European Commission consultation on the impact of the maximum remuneration ratio between variable to fixed remuneration and the overall efficiency of remuneration rules.

January 15, 2016: PRA Consultation on Implementation of Ring-Fencing for Core UK Financial Services and Activities.

January 18, 2016: PRA Consultation on Identifying Other Systemically Important Institutions.

January 22, 2016: EBA Consultation on draft guidelines on application of definition of default under the CRR.

January 22, 2016: ESAs Consultation on Anti-Money Laundering Guidelines.

January 27, 2016: EBA consultation on draft Guidelines for disclosure of confidential information under the BRRD.

February 1, 2016: Federal Reserve Board TLAC and related requirements proposal.

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. If you wish to receive more information on the topics covered in this publication, you may contact your usual Shearman & Sterling representative or any of the following:

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