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FINANCIAL INSTITUTIONS ADVISORY & FINANCIAL REGULATORY GROUP
WEEKLY NEWSLETTER

Financial Regulatory Developments Focus

SEPTEMBER 10, 2014
ISSUE 32/2014

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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

FCA Factsheet on Review of the Calculation of the Clearing Threshold by NFCs

On September 3, 2014, the UK Financial Conduct Authority ("FCA") published a review finding factsheet on the calculation of the clearing threshold by non-financial counterparties ("NFCs") and their compliance with the European Market Infrastructure Regulation ("EMIR"). The review, which was conducted in June 2014, focused on energy and oil producers and their approach to defining hedging activity and monitoring their status against the clearing threshold. The FCA review found that: (i) NFCs are accurately identifying hedging and non-hedging transactions; (ii) some issues are evident on trade reporting in relation to data retrieval and mismatching; (iii) a move towards electronic confirmation needs to be encouraged; and (iv) NFCs have adequate portfolio reconciliation arrangements in place. The FCA has conducted several similar reviews on the implementation of EMIR, most of which focus on the clearing threshold and reporting obligation.

The FCA factsheet is available at: http://www.fca.org.uk/static/documents/emir-factsheet-energy-and-oil-producers.pdf.

CFTC Staff Issues No-Action Letter for Commodity Pool Operators of Certain Commodity Pools

On September 3, 2014, the US Commodity Futures Trading Commission's ("CFTC") Division of Swap Dealer and Intermediary Oversight ("DSIO") issued a no-action letter for commodity pool operators ("CPOs") of certain commodity pools that are non-registered investment companies ("Parent Pools") and that use wholly-owned trading subsidiaries to trade commodity interests ("Trading Subsidiaries"). In cases where CPOs do not provide a separate annual report for a Parent Pool's Trading Subsidiary to the National Futures Association ("NFA") (pursuant to CFTC regulation 4.7(b) or 4.22(c), as applicable) or a separate

CPO-PQR report for a Parent Pool's Trading Subsidiary to NFA (pursuant to CFTC regulation 4.27(c)), the DSIO recommends that the CFTC not take an enforcement action so long as (i) the CPO of the Parent Pool is the CPO of the Trading Subsidiary; (ii) the exposure to the Trading Subsidiary by the participants in its Parent Pool is being shared pro rata; (iii) the CPO is consolidating the reports for the Trading Subsidiary with those of its Parent Pool; and (iv) the CPO is claiming the relief through notice.

The full CFTC staff letter is available at: http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-112.pdf.

US Agencies Seek Comment on Swap Margin Requirements

On September 3, 2013, the Board of Governors of the Federal Reserve System ("Federal Reserve Board"), the Farm Credit Administration, the Federal Deposit Insurance Corporation ("FDIC"), the Federal Housing Finance Agency, and the Office of the Comptroller of the Currency ("OCC") (in consultation with CFTC and Securities and Exchange Commission ("SEC")) issued a notice of proposed rulemaking to establish margin requirements for swap dealers, major swap participants, security-based swap dealers and major security-based swap participants. The proposed rule, mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), would establish minimum requirements for the exchange of initial and variation margin between covered swap entities and their counterparties to non-cleared swaps and non-cleared security-based swaps entered into after the proposed rule's applicable compliance dates. The required margin would differ based on the relative risk of the counterparty and of the non-cleared swap or non-cleared security-based swap.

The proposed rule modifies and expands a rule first released by the agencies in April 2011 based on comments received on that rule. For example, the current proposed rule increases the types of collateral eligible to be posted as initial margin and also aims to promote global consistency by generally following the final framework for margin requirements on non-cleared derivatives that the Basel Committee on Banking Supervision ("BCBS") and the International Organization of Securities Commissions ("IOSCO") adopted in September 2013. The agencies have requested comments on the proposed rule no later than 60 days after the date of its publication in the Federal Register.

The proposed rule is available at: https://www.fdic.gov/news/board/2014/2014-09-03_notice_dis_a_fr.pdf.

Bank Prudential Regulation & Regulatory Capital

Capital Requirements Implementing Technical Standards Published in the Official Journal

On September 5, 2014, the implementing technical standards ("ITS") relating to relevant appropriately diversified indices for the calculation of capital

requirements for equity risk according to the Capital Requirements Regulation ("CRR") were published in the Official Journal of the European Union. The ITS is based on the draft ITS submitted to the Commission by the European Banking Authority and contains a list of stock indices meeting the requirements of the CRR. The ITS will enter into force on September 25, 2014.

The ITS is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_265_R_0002&rid=1.

Corrigendum to Capital Requirements Delegated Regulation Published in the Official Journal

On September 5, 2014, a corrigendum to the text of the European Commission delegated regulation supplementing the CRR with regard to regulatory technical standards ("RTS") for non-delta risk of options in the standardized market approach was published in the Official Journal of the European Union.

The corrigendum is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_265_R_0012&from=EN.

ESRB Guidance for Setting Countercyclical Buffer Rates Published in OJ

On September 2, 2014, the European Systemic Risk Board ("ESRB") recommendations for setting countercyclical buffer rates ("CBRs") were published in the Official Journal of the European Union. The ESRB guidance consists of a set of principles and recommendations that national authorities are expected to follow when setting CBR rates, as well as guidance on the measurement and calculation of the credit-to-GDP gap, calculation of the benchmark buffer rate and the buffer guide, variables that indicate the build-up of system-wide risk associated with periods of excessive credit growth and variables that indicate that the buffer should be maintained, reduced or fully released.

The recommended measures will apply from the date on which a member state requires credit institutions in their jurisdiction to maintain an institution-specific CRB in accordance with the Capital Requirements Directive. National authorities are to report to the ESRB, the Council of the EU and the European Commission by June 30, 2016 on the measures they have taken to comply with the recommendation.

The recommendations are available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014Y0902(01)&from=EN.

PRA Final Supervisory Statement on its Approach to Supervising Branches

On September 5, 2014, the Prudential Regulation Authority ("PRA") published a Policy Statement and a Supervisory Statement on supervising international banks and the PRA's approach to branch supervision. The Policy Statement includes final rules which, from September 5, 2014, will require a firm to ensure that its

resolution plan provides adequately for the resolution of the UK branch. The PRA intends to introduce, at a later date, a rule for all EEA and non-EEA branches to submit a data return twice a year.

The PRA's Supervisory Statement sets out its approach to supervising non-UK headquartered firms which the PRA states is unchanged from its proposed approach set out in its February 2014 consultation paper. Non-EEA branches will need to be authorized by the PRA which will involve an assessment by the PRA of: (i) the equivalent supervision and resolution requirements by the home state supervisor of the bank; (ii) the risks posed by the activities the branch intends to undertake; and (iii) the arrangements for resolution of the UK branch. The minimum requirements for authorization of a UK branch will apply to the whole firm, not just the branch. The PRA, in assessing the risk of the activities, states that non-EEA branches will be able to undertake retail activities but only at de minimis levels unless there are high levels of assurances over the resolution of the branch. The PRA expects non-EEA branches to focus on wholesale banking at a level that is not critical to the UK economy.

The PRA Supervisory Statement is available at:
http://www.bankofengland.co.uk/pra/Documents/publications/ss/2014/ss1014.pdf
and the PRA Policy Statement is available at:
http://www.bankofengland.co.uk/pra/Documents/publications/ps/2014/ps814.pdf

US Agencies Request Comment on Proposed Q&A Regarding Community Reinvestment

On September 8, 2014, the Federal Reserve Board, the FDIC, and the OCC requested comment on proposed revisions to the "Interagency Questions and Answers Regarding Community Reinvestment" ("Q&A"). The Q&A provides new guidance to financial institutions and the public on regulations that implement the Community Reinvestment Act ("CRA"), addressing issues raised by bankers, community organizations and others regarding alternative systems for delivering retail banking services, innovative or flexible lending practices, community development-related issues and evaluation by examiners of the responsiveness and innovativeness of an institution's loans, qualified investments, and community development services. Comments on the proposed questions and answers will be due 60 days after publication in the Federal Register.

The questions and answers are available at:
https://www.fdic.gov/news/news/press/2014/pr14078.pdf.

US Agencies Adopt Supplementary Leverage Ratio Final Rule

On September 3, 2014, the Federal Reserve Board, FDIC, and the OCC adopted a final rule to adjust the definition of the denominator of the supplementary leverage ratio in line with recent changes agreed to by the BCBS. The changes are intended to better reflect a banking organization's on- and off-balance sheet exposures, and based on estimates, would increase the aggregate measure of exposure across firms.

In addition to modifying the methodology for including off-balance sheet items in the denominator of the supplementary leverage ratio, the final rule also requires institutions to calculate total leverage exposure using daily averages for on-balance sheet items and the average of three month-end calculations for off-balance sheet items. These changes to the supplementary leverage ratio apply to all banking organizations subject to the advanced approaches risk-based capital rule. Certain public disclosures required by the final rule must be made starting in the first quarter of 2015 and the minimum supplementary leverage ratio requirement using the final rule's denominator calculations is effective January 1, 2018.

The final rule is available at:
https://www.fdic.gov/news/board/2014/2014-09-03_notice_dis_c_fr.pdf.

US Federal Banking Regulators Finalize Liquidity Coverage Ratio

On September 3, 2014, the Federal Reserve Board, the FDIC, and the OCC finalized a rule to establish a standardized minimum liquidity requirement for large and internationally active banking organizations. Pursuant to the rule, each institution must hold high quality, liquid assets ("HQLA") that can be converted easily into cash in an amount equal to or greater than its projected cash outflows minus its projected cash inflows during a 30-day stress period.

The ratio of the firm's liquid assets to its projected net cash outflow, its "liquidity coverage ratio" or "LCR," applies to all banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in on-balance sheet foreign exposures. The LCR also applies to these banking organizations' subsidiary depository institutions that have assets of $10 billion or more. A less stringent, modified LCR will apply to bank holding companies and savings and loan holding companies that do not meet these thresholds, but have $50 billion or more in total assets. Bank holding companies and savings and loan holding companies with substantial insurance or commercial operations are not covered by the rule. The final rule also does not apply to non-bank financial companies designated by the Financial Stability Oversight Council for enhanced supervision.

The final rule includes only a few modifications from the proposed version, including changes to the range of corporate debt and equity securities included in HQLA, a phasing-in of daily calculation requirements, a revised approach to address maturity mismatch during a 30-day period, and changes in the stress period, calculation frequency, and implementation timeline for the bank holding companies and savings and loan companies subject to the modified LCR. The rule is based on a liquidity standard agreed to by the BCBS and the LCR will establish an enhanced prudential liquidity standard consistent with section 165 of the Dodd-Frank Act. While the rule is generally consistent with the Basel Committee's LCR standard, it is more stringent in certain areas, including a shorter transition period for implementation. US firms will be required to be fully compliant with the rule by January 1, 2017.

The final rule is available at: https://www.fdic.gov/news/board/2014/2014-09-03_notice_dis_b_fr.pdf.

OCC Finalizes Heightened Standards for Large Financial Institutions

On September 2, 2014, the OCC published final guidelines to strengthen certain governance and risk management practices of insured national banks, insured federal savings associations, and insured federal branches of foreign banks with $50 billion or more in average total consolidated assets. The final guidelines also apply to an OCC-regulated institution with less than $50 billion in average total consolidated assets if that institution's parent company controls at least one other covered institution. Pursuant to the guidelines, these large financial institutions should establish and comply with a written risk governance framework to manage its risk-taking activities. The guidelines set forth minimum standards for the institutions' boards of directors to oversee the risk governance framework.

Institutions with $750 billion or more in average total consolidated assets should comply with the guidelines immediately upon the effective date as published in the Federal Register. Institutions with between $100 billion and $750 billion in average total consolidated assets have until six months of the effective date to comply. For institutions with average total consolidated assets ranging from $50 billion to $100 billion, compliance is expected within 18 months of the effective date and for those with less than $50 billion in average total consolidated assets that are covered because their parent company controls at least one other covered bank, compliance should be by the same date that the other covered bank is expected to comply. Institutions that reach the $50 billion threshold following publication of the guidelines should comply within 18 months from the date of the call report determining that it exceeded the threshold.

The final guidelines are available at: http://www.occ.gov/news-issuances/news-releases/2014/nr-occ-2014-117a.pdf.

Joint Forum Issues Report on Supervisory Colleges for FCs

On September 3, 2014, the BCBS, the IOSCO and the International Association of Insurance Supervisors (the "Joint Committee") issued a report setting out their findings from a recent survey of their members on supervisory colleges for financial conglomerates ("FCs"). The survey aims to indicate whether cross-sectoral issues and specific questions relating to FCs are addressed effectively within supervisory colleges, and to also provide information about the Joint Forum's principles for the supervision of FCs (in particular, Principle 6 regarding supervisory co-operation, co-ordination and information sharing) and their implementation. The survey concludes that most supervisors have a set of principles in place for supervising FCs as well as memorandum of understanding or co-ordination arrangements, and that most supervisors also believe that cross-sectoral issues are adequately and effectively reviewed within FC supervisory colleges or sectoral supervisory colleges. Issues on the implementation of principle 6 were identified, including that: (i) not all member

jurisdictions have a specific supervision framework in place for FCs; (ii) there are insufficient specific mechanisms for supervisory co-operation in periods of crisis; and (iii) there are opportunities for regulatory arbitrage due to differences in the regulatory and supervisory frameworks for FCs. The Joint Forum intends to reconsider these issues in a year's time.

The report is available at:
http://www.bis.org/publ/joint36.pdf.

Financial Services

EBA Decision Adopting Rules of Procedure for Investigation of Breach of Union Law

On September 3, 2014, the EBA published its decision (dated July 14, 2014) adopting rules of procedure for investigating breach of union law under the regulation establishing the EBA, under which the EBA may investigate an alleged breach or non-application of Union law by regulators.

The decision sets out the scope and application of the rules of procedure and the criteria to be taken into account for requests to initiate investigations by third parties and replaces the decision of the EBA of July 5, 2012 concerning the Internal Processing Rules on Investigation.

The Rules entered into force on July 15, 2014.

The EBA decision is available at:
http://www.eba.europa.eu/documents/10180/15718/EBA+DC+100+%28Decision+on+Rules+of+Procedure+for+Investigation+of+Breach+of+Union+Law%29.pdf/22650774-0ff2-42e7-bfca-b163fc2c95ae.

People

SEC Names Victor J. Valdez as Enforcement Division's Chief Operating Officer

On September 8, 2014, the SEC announced that Victor J. Valdez has been named Chief Operating Officer and Managing Executive of the agency's Enforcement Division, where he will oversee project management, information technology, human capital strategy, and risk management among other functions.

Tracey L. McNeil Named as SEC's First Ombudsman

On September 5, 2014, the SEC announced that Tracey L. McNeil has been selected as the first ombudsman for the agency.

SEC Names Brent J. Fields to Lead Office of the Secretary

On September 5, 2014, the SEC announced that Brent J. Fields has been appointed as the agency's Secretary, who is responsible for overseeing the administrative aspects of SEC meetings, rulemakings, and procedures.

Events

September 10, 2014: US House of Representative's Committee on Financial Services hearing entitled "An Overview of the Credit Reporting System."

September 18, 2014: FCA MiFID II conference.

October 8, 2014: European Securities and Markets Authority open hearing on Market Abuse and the proposed draft technical standards for the Market Abuse Regulation.

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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