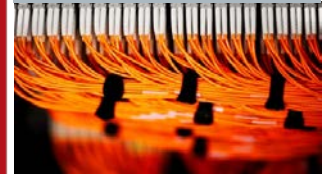


Financial Regulatory Developments Focus



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- Bank Prudential Regulation & Regulatory Capital
- Bank Structure
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- Enforcement
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- Financial Services
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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

Office of the Comptroller of the Currency Revises Process for Management Matters Requiring Attention

On October 30, 2014, the U.S. Office of the Comptroller of the Currency (“OCC”) published revised policies and procedures regarding the management of Matters Requiring Attention (“MRAs”) due to supervised institutions’ examinations. MRAs allow the communication of specific supervisory concerns found during examinations to management teams and boards of regulated institutions in writing. In return, MRAs must receive corrective action by the bank’s management team and/or board. The updated guidance improves the agency’s ability to provide for a safe and sound federal banking system. It emphasizes timeliness and corrective action. The guidance further standardizes MRA terminology, format, follow-up, analysis, and reporting. The principles of the MRA guidance are applicable to examinations of all national banks, federal savings associations, and federal branches and agencies.

The OCC press release is available at: <http://www.occ.gov/news-issuances/news-releases/2014/nr-occ-2014-150.html>.

European Banking Authority Opinion on Prudential Requirements for Credit and Investment Institutions and Exemption Regime

On October 29, 2014, the European Banking Authority (“EBA”) published an Opinion on the prudential requirements for credit and investment institutions and exemption regime under the Capital Requirements Directive (“CRD”) and Capital Requirements Regulation (“CRR”) (together known as “CRD IV”). The Opinion deals mainly with issues relating to waivers granted by national authorities, and whether they are prudentially justified. The majority of waivers under CRD IV were deemed to be justified, although the EBA states that their use should be reviewed in future so as to take into account their interactions with the recovery and resolution strategies of banks, as well as the Bank Recovery and Resolution Directive which applies from January 1, 2015, save for the bail-in provisions

which must apply from January 1, 2016 at the latest. The EBA recommends that the European Commission consider whether the application of waivers at member state level remains appropriate in light of the new Banking Union.

The Opinion is available at:

<http://www.eba.europa.eu/documents/10180/657547/EBA-Op-2014-11+%28Opinion+on+CfA+on+art+108+and+109%29.pdf>.

Delegated Regulations under CRD IV

On October 30, 2014, the following regulatory technical standards (“RTS”) supplementing CRD IV were published in the Official Journal of the European Union:

1. Delegated Regulation on the identification of the geographical location of the relevant credit exposures for calculating institution-specific countercyclical capital buffer rates and the geographical location of trading book and securitization exposures.
2. Delegated Regulation on information to be notified when exercising the right of establishment and the freedom to provide services, covering the requirements for notifications for branch passports, changes in branch particulars, termination of operation of a branch and services passport notifications.

Both RTS enter into force on November 19, 2014.

The Delegated Regulation on credit exposures is available at: [http://eur-lex.europa.eu/legal-](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.309.01.0005.01.ENG)

[content/EN/TXT/?uri=uriserv:OJ.L_.2014.309.01.0005.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.309.01.0005.01.ENG) and the

Delegated Regulation on passporting notifications is available at: [http://eur-lex.europa.eu/legal-](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.309.01.0001.01.ENG)

[content/EN/TXT/?uri=uriserv:OJ.L_.2014.309.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.309.01.0001.01.ENG).

Joint Committee of the European Supervisory Authorities Publishes Addendum to Consultation on Mapping of Assessments by Credit Rating Agencies

On October 30, 2014, the EBA, European Securities and Markets Authority and European Insurance and Occupational Pensions Authority, together known as the Joint Committee of the European Supervisory Authorities, published an addendum to their consultation paper on draft implementing technical standards (“ITS”) on the mapping of the credit assessments to risk weights of external credit assessment institutions (“ECAIs”) (i.e. credit rating agencies) under the CRR. The addendum comprises the relevant ECAIs’ individual mapping tables and provides further explanations and details on the application of the ITS to the relevant ECAIs. The consultation is now reopened and will close on November 30, 2014.

The addendum is available at:

<http://www.eba.europa.eu/documents/10180/877382/JC-CP-2014-01add+%28Addendum+to+Joint+CP+on+draft+ITS+on+the+mapping+of+ECAIs%29%20-for+publication.pdf>.

European Commission Reports on Country-by-Country Reporting Obligation

On October 30, 2014, the European Commission issued a report on the economic consequences of the country-by-country public reporting obligation. CRD IV introduces a new reporting obligation for banks and investment firms to report their names, activities, geographical locations, turnover, staff numbers, profit or loss before tax, tax on profit or loss, as well as any public subsidies received. Institutions will be required to report such data to national regulators on an annual basis, and for each country in which they are established. The European Commission's report aims to assess whether this new obligation is likely to bring about any significant negative economic effects. The report concludes that the new obligation has a positive impact in the promotion of transparency and accountability in the EU financial sector. The report states that this requirement is not expected to have any significant negative impact, although additional guidance may be required to further clarify the contents of the recorded data, so as to minimize the risk of any data being misunderstood. The new public reporting obligation will apply in full from January 1, 2015.

The European Commission's report is available at:

http://ec.europa.eu/internal_market/company/docs/modern/141030-cbcr-crd-report_en.pdf.

European Banking Authority Consults on Materiality Threshold of Credit Obligation Past Due

On October 31, 2014, the EBA issued a consultation paper on draft RTS on the materiality threshold of credit obligations past due under the CRR. The EBA is proposing an absolute materiality threshold, as well as a relative materiality threshold. The absolute threshold would relate to the credit obligation past due for more than 90 or 180 days (depending on the decision of the national regulator), and the relative threshold would relate to a percentage of the total credit obligation that is past due. A default would be deemed to have occurred when both of these limits are breached. The objective of the thresholds is to promote consistency in assessing bad debts across the EU. The consultation closes on January 31, 2015.

The consultation paper is available at:

<http://www.eba.europa.eu/documents/10180/878549/EBA-CP-2014-32+%28CP+on+RTS+on+Past+Due+Materiality+Threshold%29.pdf>.

European Central Bank Assumes New Prudential Supervisory Role for EU Banks

On November 4, 2014, the European Central Bank assumed its new prudential supervisory role for banks in the Eurozone under the Single Supervisory Mechanism ("SSM"). The SSM creates a new system of financial supervision, under which the ECB will directly supervise 120 significant banking groups, and will set and monitor supervisory standards for other Eurozone banks by working more closely with national regulators.

The ECB's new banking supervision website is available at:

<https://www.bankingsupervision.europa.eu/home/html/index.en.html>.

Financial Conduct Authority Consults on Retail Distribution Restrictions of Contingent Convertible Securities

On October 29, 2014, the UK's Financial Conduct Authority ("FCA") issued a consultation paper on restrictions on the retail distribution of regulatory capital instruments. The FCA put temporary rules in place restricting the retail distribution of contingent convertible securities ("CoCos") earlier this year, which came into force on October 1, 2014 for the period of a year. The FCA is now proposing permanent rules that would apply to all authorized firms in the UK, including issuers of CoCos, firms promoting or intermediating transactions in CoCos, as well as funds investing in CoCos. The new rules would prevent the distribution of complex, unusual or risky investments to retail consumers who are not sophisticated, high net worth or likely to be suitable for such investments. Retail distribution of CoCos would be prohibited, unless the prospective client meets certain defined criteria. The prohibition would not apply to professional or institutional clients. Restrictions would also apply to the retail distribution of certain pooled investments that invest mainly or wholly in CoCos. The paper also deals with proposed requirements for the retail distribution of regulatory share capital instruments issued by mutual societies, including core capital deferred shares. The consultation closes on January 29, 2015.

The consultation paper is available at:

<http://www.fca.org.uk/static/documents/consultation-papers/cp14-23.pdf>.

Bank of England Publishes Financial Policy Committee's Review of Role of Leverage Ratio

On October 31, 2014, the Financial Policy Committee's ("FPC") review of the role of the leverage ratio in the capital framework for UK firms was published by the Bank of England ("BoE"). The FPC requests that HM Treasury enables the FPC to give directions to the Prudential Regulation Authority ("PRA") to set leverage ratio requirements and buffers for PRA-regulated institutions. The directions should include a minimum leverage ratio requirement, a supplementary leverage ratio buffer to apply to global systemically important banks and major UK institutions, as well as a countercyclical ratio buffer. The BoE also published a letter from George Osborne, the Chancellor of the Exchequer, to Mark Carney, the Governor of the BoE, stating that the government accepts these FPC recommendations, aims to grant the FPC such powers of direction and will set out proposals to Parliament to do so.

The review document is available at:

http://www.bankofengland.co.uk/financialstability/Documents/fpc/fs_lrr.pdf.

Basel Committee Publishes Final Standard for the Net Stable Funding Ratio

On October 31, 2014, the Basel Committee on Banking Supervision ("Basel Committee") issued its final standard for the Net Stable Funding Ratio ("NSFR"). The NSFR is defined as the amount of available stable funding relative to the amount of required stable funding. "Available Stable Funding" is defined as the portion of a bank's capital and liabilities expected to be reliable

over the time horizon considered by the NSFR, which is one year. The amount of such stable funding required, also known as Required Stable Funding, of a specific institution is a function of the liquidity characteristics and residual maturities of the various assets held by that institution, as well as those of its off-balance sheet exposures. The final NSFR standard is similar in structure to the 2014 consultative proposals. However, several changes were introduced in the final standard, including in relation to the required stable funding for: (i) short-term exposures to banks and other financial institutions; (ii) derivatives exposures; and (iii) assets posted as initial margin for derivative contracts. The NSFR will become a minimum standard by January 1, 2018. The Basel Committee is currently developing disclosure standards for the NSFR, which are expected to be published for consultation around year end.

The final standard for the NSFR is available at:

http://www.sfindustry.org/images/uploads/pdfs/Basel_Final_Net_Stable_Funding_Ratio.pdf.

Bank Structure

Financial Stability Board Reports on Implications of Structural Banking Reforms

On October 27, 2014, the Financial Stability Board ("FSB") published its report to the G20 on cross-border consistency and global financial stability implications of structural banking reforms. The FSB worked with the International Monetary Fund and the Organization for Economic Co-operation and Development to collect data and perspectives from jurisdictions implementing structural banking reforms and from other jurisdictions that may be impacted by the reforms. The report considers the U.S. Volcker Rule, swaps push-out rule and enhanced prudential standards for foreign banking organizations, the UK ring-fencing laws and approach to foreign branches, the EU proposed regulation following the Liikanen report and reforms implemented in Switzerland, France and Germany. The report concludes that there is consensus that the structural reforms being implemented or proposed aim to support the reforms to reduce systemic risk or improve resolvability of banks. Jurisdictions that are not implementing any structural reforms noted that there may be some negative cross-border implications of the reforms such as reduced liquidity, regulatory arbitrage and risks moving to the shadow banking arena. The FSB intends to update its assessment of the reforms for the G20 for 2016.

The report is available at:

http://www.financialstabilityboard.org/publications/r_141027.pdf.

Derivatives

Commodity Futures Trading Commission Issues Extension of Time-Limited, No-Action Relief to Futures Commission Merchants

On October 31, 2014, the U.S. Commodity Futures Trading Commission (“CFTC”) issued an extension of the previously-issued, time-limited, no-action relief to the Futures Industry Association and its member Futures Commission Merchants (“FCMs”). The no-action relief relates to the simultaneous recording of book entry credits upon the receipt of customer funds via a wire transfer by an FCM.

CFTC Staff Letter 14-131 is available at:

<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-131.pdf>.

Commodity Futures Trading Commission Issues Interpretation Regarding Notification and Reporting Requirements Applicable to Uncleared Swap Transactions

On October 31, 2014, the CFTC issued an interpretation that provides guidance on certain provisions of CFTC regulations 23.701 and 23.704, which impose certain notification and reporting requirements on swap dealers (“SDs”) and major swap participants (“MSPs”) for margin posted by their counterparties in uncleared swap transactions. The interpretation clarifies that: (i) an SD or MSP must provide annual notification to each counterparty of its right to elect to require segregation of initial margin, each time the SD or MSP enters into a new uncleared swap transaction; (ii) the annual notification and quarterly reporting requirements set forth in Regulations 23.701 and 23.704 are not applicable if no initial margin is required to be posted by a counterparty or collected by an SD or MSP; and (iii) under certain conditions an SD or MSP is not prohibited from relying on negative consent in complying with its obligations to obtain from its counterparty: (a) confirmation of the counterparty’s receipt of the annual notice provided by the SD or MSP under Regulation 23.701, and (b) the counterparty’s election to require or not require segregation.

CFTC Staff Letter 14-131 is available at:

<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-132.pdf>.

Enforcement

Serious Fraud Office Issues Criminal Proceedings in Relation to LIBOR Manipulation

On October 28, 2014, the UK’s Serious Fraud Office (“SFO”) announced that it has issued criminal proceedings against Noel Cryan, a former employee at Tullett Prebon Group Ltd, for the manipulation of LIBOR, which brings the number of individuals facing charges brought by the SFO for LIBOR manipulation to thirteen.

The SFO press release is available at: <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/libor-investigation-further-charge-.aspx>.

Financial Market Infrastructure

Federal Reserve Board Publishes Final Rule for Systematically Important Designated Financial Market Utilities and Policy on Payment System Risk

On October 28, 2014, the U.S. Federal Reserve Board issued a final rule amending the Regulation HH risk-management standards for systematically important designated financial market utilities (“FMUs”). The Federal Reserve Board is introducing a common set of risk management standards for all types of designated FMUs to replace the sets of risk management standards for payment systems and for central securities depositories (“CSDs”). The common set of risk management standards and definitions are based on the Principles for Financial Market Infrastructures (“PFMI”) which was published in April 2012 by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions. The final rule is effective December 31, 2014.

The Federal Reserve Board has also adopted revisions to part I of its Federal Reserve Policy on Payment System Risk to conform to international standards described in the PFMI. Significant amendments to the rule and modifications to the policy include establishing separate standards to address credit risk and liquidity risk, new requirements on recovery and orderly wind-down planning, a new standard on general business risk, a new standard on tiered participation arrangements, and heightened requirements on transparency and disclosure.

The final rule for amendments to Regulation HH is available at:

<http://www.federalreserve.gov/newsevents/press/other/other20141028a1.pdf>.

The revisions to the Federal Reserve Policy on Payment System Risk are available

at: <http://www.federalreserve.gov/newsevents/press/other/other20141028a2.pdf>.

UK Regulations Implementing EU Central Securities Depositories Regulations

On October 30, 2014, the UK Central Securities Depositories Regulations 2014 were published. The Regulations implement parts of the EU Central Securities Regulation by designating (i) the BoE as the authority responsible for authorization and supervision of CSDs and the oversight of securities settlement systems in the UK; (ii) the FCA as the authority responsible for supervision of trading venues and supervision of the requirement to record transactions in transferable securities in book entry form following a financial collateral arrangement; and (iii) the PRA as the responsible authority for authorization of CSDs providing banking-type ancillary services. The Regulations come into effect on November 21, 2014.

The Regulations are available at:

http://www.legislation.gov.uk/uksi/2014/2879/pdfs/uksi_20142879_en.pdf.

Financial Services

UK Consultation on Fairness and Effectiveness of the Fixed Income, Currency and Commodities Markets

On October 27, 2014, the UK's Fair and Effective Markets Review ("FEMR") invoked a consultation on the fairness and effectiveness of the Fixed Income, Currency and Commodities ("FICC") markets and ways in which those markets might be improved. FEMR, which is a review undertaken by the BoE, PRA and FCA: (i) proposes to define the terms "effective" and "fair"; (ii) seeks views on where fairness and effectiveness in the FICC markets are most deficient, focusing on six areas – market microstructure, competition and market discipline, benchmarks, responsibilities, governance and incentives, and surveillance and penalties; (iii) seeks feedback on the extent to which regulatory, organizational and technological changes recently introduced are likely to address deficiencies in effectiveness and fairness; and (iv) requests input on what other steps could be taken to improve fairness and effectiveness in the FICC markets. The consultation closes on January 30, 2015 and FEMR will publish its recommendations in June 2015.

The consultation paper is available at:

<http://www.bankofengland.co.uk/markets/Documents/femr/consultation271014.pdf>.

Consultation on Money Laundering Obligations in the Private Equity Sector

On October 28, 2014, the UK Joint Money Laundering Steering Group published a consultation on a proposed guide to money laundering obligations in the private equity sector. Responses to the consultation are due by November 12, 2014.

The consultation paper is available at: <http://www.jmlsg.org.uk/industry-guidance/article/jmlsg-guidance-current>.

Consumer Protection

Federal Financial Institutions Examination Council Releases Cybersecurity Assessment Observations

On November 3, 2014, the U.S. Federal Financial Institutions Examination Council ("FFIEC") released observations from the recent cybersecurity assessment. During the past several months, FFIEC members led a cybersecurity assessment within 500 community institutions in order to gauge the institutions' ability to alleviate cybersecurity risks. The "FFIEC Cybersecurity Assessment General Observations" includes questions that senior management may consider when examining their institutions' cybersecurity preparedness.

The FFIEC also recommended that regulated financial institutions participate in the Financial Services Information Sharing and Analysis Center ("FS-ISAC") as part of their process in identifying and assessing their cybersecurity risks. The FS-ISAC is a medium created by financial services industry participants in order to share information regarding threats to cybersecurity.

The FFIEC Cybersecurity Assessment General Observations is available at:

http://www.ffiec.gov/press/PDF/FFIEC_Cybersecurity_Assessment_Observations.pdf.

The Cybersecurity Threat and Vulnerability Monitoring and Sharing Statement is available at:

http://www.ffiec.gov/press/PDF/FFIEC_Cybersecurity_Statement.pdf.

Shadow Banking

Financial Stability Board Reports on Monitoring of Shadow Banking

On October 30, 2014, the FSB published its fourth annual Global Shadow Banking Monitoring Report. The report uses end-2013 data from 25 jurisdictions and the Eurozone as a whole to map areas where shadow banking risks might appear. The FSB will continue to work to eliminate data inconsistencies and gaps and to capture data of sufficient granularity so that future reports can present improved information.

The report is available at:

http://www.financialstabilityboard.org/publications/r_141027.pdf.

People

Federal Deposit Insurance Corporation Names New Chief Information Officer

On November 3, 2014, the U.S. Federal Deposit Insurance Corporation announced the appointment of Barry West as Chief Information Officer and Barbara Hagendbaugh as Deputy to the Chairman for Communications.

Events

January 14, 2015: EBA open hearing on materiality threshold of credit obligation past due under the CRR.

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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