

## Financial Regulatory Developments Focus



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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.**

### Bank Prudential Regulation & Regulatory Capital

#### Revised Comptroller's Handbook

On December 16, 2014, the Office of the Comptroller of the Currency (“OCC”) issued a revised version of the “Truth in Lending Act” booklet. The handbook provides updated guidance to examiners on recent changes made to Regulation Z, specifically in relation mortgage lending.

The handbook is available at:

<http://www.occ.gov/publications/publications-by-type/comptrollers-handbook/truth-in-lending-handbook.pdf>

#### FDIC Issues Guidance for the Resolution Plans of Large Banks

On December 17, 2014, the Federal Deposit Insurance Corporation (“FDIC”) issued guidance for resolution plans which must be submitted by insured depository institutions with assets greater than \$50 billion (“Covered Institutions”). FDIC rules require Covered Institutions to provide a resolution plan that will permit the FDIC as receiver under the Federal Deposit Insurance Act to resolve the institution in a methodical manner. The plan should allow for prompt access of insured deposits, maximization of the return from the failed institution’s asset, and mitigation of losses realized by creditors. The FDIC guidance includes direction on the fundamentals that should be introduced in a fully developed resolution strategy. The guidance entails a cost analysis, clarification regarding assumptions made in the plan, and a list of significant complications that institutions should address. The guidance relates to the resolution plans of 36 insured banks that currently meet the criteria, as well as any new institution meeting the threshold, commencing with the 2015 submissions.

The guidance is available at:

<https://www.fdic.gov/news/news/press/2014/pr14109a.pdf>

### Proposed Changes to Regulatory Capital Rule

On December 18, 2014, the OCC, the Board of Governors of the Federal Reserve Board (“Federal Reserve Board”), and the FDIC proposed adjustments to update certain provisions of the revised regulatory capital rule adopted in October 2013. The proposed revisions only apply to banking organizations subject to the advanced approaches risk-based capital framework. The proposed revisions clarify some aspects of the qualification requirements for advanced approaches systems and better conform the advanced approaches subpart of the revised regulatory capital rule to the Basel framework.

The proposed rulemaking is available at:

<http://www.occ.gov/news-issuances/bulletins/2014/bulletin-2014-62a.pdf>

### Federal Reserve Board Extends Volcker Rule Conformance Period

On December 18, 2014, the Federal Reserve Board announced that under section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), also known as the Volcker Rule, banking entities will be given until July 21, 2016 to conform their relationships and investments in legacy covered funds (those in place before December 31, 2014). Further, the Federal Reserve Board announced that it will grant an additional one-year extension to banking entities next year, extending the conformance period even further to July 21, 2017. Generally, Section 619 prohibits proprietary trading and acquiring or retaining ownership interests in hedge funds or private equity funds by insured depository institutions and any company affiliated with an insured depository institution. Originally, Section 619 gave entities until July 21, 2014 to conform to the requirements and later extended the period to July 21, 2015.

The Federal Reserve Board announcement is available at:

<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20141218a1.pdf>

### SEC Proposes Amendments to Implement JOBS Act Mandate

On December 18, 2014, the Securities and Exchange Commission (“SEC”) approved the issuance of proposed amendments intended to revise the rules under Section 12(g) of the Exchange Act which were mandated by the Jumpstart Our Business Startups Act (“JOBS Act”). The JOBS Act revised Exchange Act Section 12(g) to raise the threshold at which an issuer is required to register a class of equity securities. In addition, the JOBS Act raised the threshold at which a bank or a bank holding company may terminate or suspend the registration of a class of securities under the Exchange Act from 300 to 1,200 persons. The proposal would establish the mandate of the JOBS Act by amending and revising rules which govern the procedures relating to registration, termination of registration and suspension of reporting obligations to reflect the new thresholds established by the JOBS Act. Public comments are due 60 days after the proposed rule is published in the Federal Register.

The proposed rule is available at:

<http://www.sec.gov/rules/proposed/2014/33-9693.pdf>

### **Agencies Issue Annual Adjustment to Asset-Size Thresholds for Small and Intermediate Small Institutions**

On December 19, 2014, the Federal Reserve Board, FDIC and OCC issued an annual adjustment to the asset-size thresholds for small and intermediate small institutions required by the Community Reinvestment Act rules. Under these rules, small and intermediate financial institutions are examined using various procedures dependent on their asset-size classification. For the period ending November 2014, there was a 1.60 percent increase in the CPI index and the definitions of small and intermediate small institutions are altered as follows:

- “Small bank” or “small savings association” are defined as institution that had assets of less than \$1.221 billion as of December 31 of either of the prior two calendar years.
- “Intermediate small bank” or “intermediate small savings association” are defined as a small institution with, as of December 31 of both of the prior two calendar years, assets of at least \$305 million, and, as of December 31 of either of the prior two calendar years, assets less than \$1.221 billion.

The adjustments are effective January 1, 2015 and will be published in the Federal Register. The agencies will also post a list of the current and historical asset-size thresholds on the Federal Financial Institutions Examination Council website (<http://www.ffiec.gov/cra>).

The Federal Reserve notice is available at:

<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20141219a1.pdf>

### **European Banking Authority Issues Final Guidelines on Other Systemically Important Institutions**

On December 16, 2014, the European Banking Authority (“EBA”) published its final guidelines on the criteria to determine the conditions of application of the Capital Requirements Directive IV (“CRD IV”) package in relation to the assessment of other systemically important institutions. The guidelines establish a scoring process for assessing systemic importance based on evaluating an institution’s size, importance, complexity, cross-border activity and interconnectedness.

The guidelines are available at:

<http://www.eba.europa.eu/documents/10180/930752/EBA-GL-2014-10+%28Guidelines+on+O-SIIs+Assessment%29.pdf>.

### **European Securities and Markets Authority Reports on Credit Rating Agencies Monitoring**

On December 16, 2014, the European Securities and Markets Authority (“ESMA”) published a report on the way credit rating agencies (“CRAs”) monitor their structured finance credit ratings. The report involves the following CRAs:

DBRS Ratings, Fitch Ratings, Moody's Investors Service and Standard & Poor's. ESMA's findings concludes that certain CRAs do not complete annual reviews of ratings in a timely manner and lack quality control over the information used and obtained from data providers. ESMA also identified inadequacies in relation to disclosure and transparency practices that could be detrimental to investors. ESMA requests that CRAs introduce remedial procedures to resolve these issues and has stated that it will follow up with each of the CRAs individually to ensure that the issues identified are resolved appropriately.

The report is available at:

[http://www.esma.europa.eu/system/files/esma-2014-1524\\_cra\\_public\\_report\\_on\\_s\\_f\\_investigation.pdf](http://www.esma.europa.eu/system/files/esma-2014-1524_cra_public_report_on_s_f_investigation.pdf).

### **European Banking Authority Proposes Amendments to Regulation on Leverage Ratio and Liquidity Coverage Ratio**

On December 16, 2014, the EBA published two consultation papers proposing to amend the Regulation on supervisory reporting with regard to the leverage ratio and liquidity coverage ratio. The Regulation includes implementing technical standards ("ITS") on supervisory reporting by firms subject to CRD IV, and the amendments would reflect the Commission's adoption of the Delegated Regulation specifying the details of the leverage ratio and liquidity coverage ratio, such as scenarios in which a bank may be considered as being subject to stress, or the general requirements for a bank's assets to be qualified as liquid. The proposed revisions have been published in the consultation papers. The consultation regarding the leverage ratio closes on January 27, 2015 and the consultation regarding the liquidity coverage ratio closes on February 10, 2015.

The consultation papers are available at:

<http://www.eba.europa.eu/documents/10180/930323/EBA-CP-2014-44+%28CP+on+amending+ITS+on+LR+reporting%29.pdf> and

<http://www.eba.europa.eu/documents/10180/930269/EBA-CP-2014-45+%28CP+on+draft+amending+ITS+on+LCR+reporting%29.pdf>.

### **Revised List of ITS Validation Rules Issued by EBA**

On December 18, 2014, the EBA published a revised list of validation rules for submitting data in relation to supervisory reporting. These rules detail the standards and formats that are to be used for submissions of data by national regulators under 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-3>.

### **EBA Repeals Recommendation on Preservation of Core Tier 1 Capital of EU Banks**

On December 18, 2014, the EBA announced that it has repealed its recommendation on the preservation of core Tier 1 capital of EU banks during the transition to CRD IV. The EBA recognizes that major EU banks have

considerably strengthened their capital positions since 2011 but states that it will continue to monitor together with national competent authorities the overall capital position and Common Equity Tier 1 capital of EU credit institutions. As of December 16, 2014, the recommendation is no longer in force.

The press release is available at: <http://www.eba.europa.eu/-/repeal-of-the-eba-capital-preservation-recommendation>.

#### **Final Draft Regulatory and Implementing Technical Standards on Colleges of Supervisors under CRD IV**

On December 19, 2014, the EBA issued final draft RTS and ITS on the functioning of colleges of supervisors under CRD IV. Colleges of supervisors are a framework for coordinating and performing supervisory duties in the EU banking sector. The draft RTS lay down the general requirements for the establishment and running of colleges of supervisors. The draft ITS establish procedures to facilitate the interaction and cooperation between supervisors and national competent authorities.

The final draft RTS and ITS are available at:

<http://www.eba.europa.eu/documents/10180/935300/EBA-RTS-2014-16+and+EBA-ITS-2014-07+%28Final+draft+RTS+and+ITS+on+Colleges+of+Supervisors%29.pdf>.

#### **Prudential Regulation Authority Publishes Supervisory Statement on Disclosure of Encumbered and Unencumbered Assets**

On December 19, 2014, the PRA published a supervisory statement on compliance with the EBA's guidelines on disclosure of encumbered and unencumbered assets under CRD IV. The PRA aims to promote the safety and soundness of firms and the supervisory statement sets out the PRA's expectations of firms' compliance with the EBA Guidelines.

The supervisory statement is available at:

<http://www.bankofengland.co.uk/pradocuments/publications/ss/2014/ss1114.pdf>.

## **Derivatives**

#### **CFTC Requests Public Comment on First Derivatives Venue for Bitcoin Options**

On December 15, 2014, the US Commodity Futures Trading Commission ("CFTC") issued a public consultation on the feasibility of the first derivatives venue for Bitcoin options. It is seeking comment on applications submitted by LedgerX, LLC ("LedgerX"), a technology startup, for registration as a Derivatives Clearing Organization ("DCO") and swap execution facility ("SEF"). LedgerX plans to list and clear fully collateralized, physically settled options on Bitcoin. Comments are due by January 30, 2015.

Documents related to the application for registration as a DCO are available at:

<http://sirt.cftc.gov/sirt/sirt.aspx?Topic=ClearingOrganizationsAD&Key=30998>

Documents related to the application for registration as a SEF are available at:  
<http://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=SwapExecutionFacilitiesAD&Key=30643>

#### **CFTC Staff Issues Time-Limited No-Action Relief Under Regulation 1.35(a)**

On December 16, 2014, the CFTC issued a no-action letter extending and expanding upon previously issued relief in CFTC Staff Letter No. 14-60, providing relief from oral recordkeeping requirements for commodity trading advisors under CFTC Regulation 1.35(a). The relief is set to expire on the earlier of December 31, 2015, or the effective date of any action with respect to the CFTC's recent proposal to amend Regulation 1.35(a), published in the Federal Register on November 14, 2014.

The full text of the no-action relief letter is available at:  
<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-147.pdf>

#### **Amendments to Section 716 of the Dodd-Frank Act**

On December 16, 2014, section 716 of the Dodd-Frank Act (also known as the "Swaps Push-Out Rule") was significantly narrowed in scope by a provision in the Consolidated and Further Continuing Appropriations Act 2015 ("Spending Bill"), which was signed into law by President Obama. The Swaps Push-Out Rule provides that a bank swap dealer is not eligible for any federal assistance, including federal deposit insurance, in connection with its swap activities. Additionally every bank swap dealer was intended to transfer all or part of its swap portfolio to affiliated non-bank entities before the effective July 2015 deadline. The Spending Bill amends Section 716 so that a bank can continue to be a counterparty to all types of swaps except for certain "structured finance swaps."

The text of the amendment can be found on pages 249-250 of the Spending Bill and is available at:

<http://www.gpo.gov/fdsys/pkg/BILLS-113hr83enr/pdf/BILLS-113hr83enr.pdf>

#### **Interim Final Rule Reflecting the International Swaps and Derivatives Association Resolution Stay Protocol in Regulatory Capital and Liquidity Coverage Ratio Rules**

On December 16, 2014, the Federal Reserve Board and the OCC issued an interim final rule designed to certify that the treatment of over-the-counter derivatives, eligible margin loans, and repo-style transactions under the two agencies' regulatory capital and liquidity coverage ratio rules would be unaffected by implementation of special resolution regimes in foreign jurisdictions or by the International Swaps and Derivatives Association's Stay Protocol. Additionally, the rule also guarantees that the lending limits of affected national banks and federal savings associations would be unchanged. Among other things, the interim final rule amends the definition of a "qualifying master netting agreement" since it currently does not recognize that default rights may be stayed where a master netting agreement is subject to limited stays under foreign special resolution

regimes. The rule will be effective as of January 1, 2015 and applies to banking organizations other than state nonmember banks.

The interim final rule is available at:

<http://www.occ.gov/news-issuances/news-releases/2014/nr-ia-2014-169a.pdf>

### **CFTC Issues No-Action Relief to Entities Operating Insurance-Linked Securities Issuers**

On December 19, 2014, the CFTC issued no-action relief to entities operating issuers of insurance-linked securities (“ILS Issuer”) which exempt them from commodity pool operator registration, subject to certain conditions. To claim the relief, an operator of an ILS Issuer must file a notice of exemption with the National Futures Association pursuant to CFTC Regulation 4.13(b).

CFTC Staff Letter 12-152 is available at:

<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-152.pdf>

### **Consultation and Final Technical Advice on Implementation of Markets in Financial Instruments Directive and Regulation**

On December 19, 2014, ESMA published its final technical advice and issued a consultation on its draft ITS and regulatory technical standards (“RTS”) on the implementation of the Markets in Financial Instruments Directive (“MiFID II”) and Regulation (“MiFIR”). The main proposals include (i) increased trade transparency for non-equity instruments; (ii) a trading obligation for shares and a double volume cap mechanism for shares and equity-like instruments; (iii) an obligation to trade derivatives on MiFID venues; and (iv) position limits and reporting requirements for commodity derivatives. ESMA aims to finalize the draft RTS by mid-2015 and the draft ITS by January 2016. MiFID II, MiFIR and the implementing measures are applicable from 3 January 2017. The consultation closes on March 2, 2015.

The consultation paper and final technical advice are available here:

[http://www.esma.europa.eu/system/files/2014-1570\\_cp\\_mifid\\_ii.pdf](http://www.esma.europa.eu/system/files/2014-1570_cp_mifid_ii.pdf);

[http://www.esma.europa.eu/system/files/2014-1570\\_cp\\_mifid\\_ii\\_part\\_2.pdf](http://www.esma.europa.eu/system/files/2014-1570_cp_mifid_ii_part_2.pdf); and

[http://www.esma.europa.eu/system/files/2014-1569\\_final\\_report\\_-\\_esmas\\_technical\\_advice\\_to\\_the\\_commission\\_on\\_mifid\\_ii\\_and\\_mifir.pdf](http://www.esma.europa.eu/system/files/2014-1569_final_report_-_esmas_technical_advice_to_the_commission_on_mifid_ii_and_mifir.pdf).

## **Enforcement**

### **HM Treasury Reports on Enforcement Processes of Financial Conduct Authority and Prudential Regulation Authority**

On December 18, 2014, the UK HM Treasury published a final report on the fairness, transparency, speed and efficiency of the institutional arrangements and processes for enforcement decision-making at the Financial Conduct Authority (“FCA”) and Prudential Regulation Authority (“PRA”). The review’s recommendations include (i) a new, independent decision-making committee for the PRA; (ii) a new, expedited procedure to access the Upper Tribunal; (iii)

regular independent reviews of the FCA and PRA settlement processes; (iv) measures to encourage investigated parties to make early admissions so that cases are resolved more quickly; and (iv) publication of more information by the FCA and PRA about the criteria for starting investigations.

The report is available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/389063/enforcement\\_review\\_response\\_final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389063/enforcement_review_response_final.pdf).

### **Directors Disqualified for Misuse of Investment Funds**

On December 19, 2014, the UK Insolvency Service reported that two former directors of Connaught Asset Management, Nigel Walter and Michael Anthony Davies, have both been disqualified from controlling or managing a company for a period of 9 and 7 years respectively. The former directors allowed the misuse of up to £106m of investor money by failing to review the progress on loans made with monies borrowed from funds and not ensuring the money was repaid to the fund following loan completion.

The press release is available at:

<https://www.gov.uk/government/news/connaught-asset-management-directors-banned-for-16-years>.

## **Financial Market Infrastructure**

### **ESMA Consults on Improving Securities Settlement**

On December 18, 2014, ESMA issued three consultation papers on implementing measures for a new settlement regime under the Regulation on improving securities settlement and central securities depositories (“CSDR”). The consultations cover: (i) draft technical standards on proposed rules covering settlement discipline, central securities depositories (“CSD”) requirements, and internalized settlement; (ii) draft technical advice on proposed penalties for settlement fails; and (iii) the risks to be taken into account by a central counterparty or a trading venue when carrying out a comprehensive risk assessment following a request for access by a CSD. The CSDR’s aim is to ensure that transactions of securities are settled in a safe and timely manner. The CSDR introduces common standards for settlements across the EU, such as the harmonization of the rules governing central securities depositories which operate the infrastructures enabling settlement, and the timing of securities settlement in the EU. The three consultations close on February 19, 2015.

The consultation papers are available at:

[http://www.esma.europa.eu/system/files/2014-1563\\_csdr\\_ts.pdf](http://www.esma.europa.eu/system/files/2014-1563_csdr_ts.pdf);

[http://www.esma.europa.eu/system/files/2014-1564\\_csdr\\_ta.pdf](http://www.esma.europa.eu/system/files/2014-1564_csdr_ta.pdf); and

[http://www.esma.europa.eu/system/files/2014-1565\\_csdr\\_gl.pdf](http://www.esma.europa.eu/system/files/2014-1565_csdr_gl.pdf).



### Consultation on Strengthening Accountability in Banking

On December 19, 2014, the UK's PRA and FCA published a joint consultation paper on strengthening accountability in banking. The consultation focuses on the proposed new senior managers and certification regimes and seeks views on how senior managers are to be held accountable in their roles. The consultation paper sets out proposals on transitional arrangements for implementing the regimes, new forms supporting the regimes and consequential changes to the FCA Handbook and PRA Rulebook. The consultation closes on February 27, 2015.

The consultation is available at:

<http://www.fca.org.uk/static/documents/consultation-papers/cp14-31.pdf>.

### Funds

#### FSOC Releases Request for Comment on Asset Management Products and Activities

On December 18, 2014, the Financial Stability Oversight Council ("FSOC") voted unanimously to seek public comment regarding potential risks posed by asset management products and activities to US financial stability. Specifically, the FSOC is seeking public comment on the risks associated with liquidity and redemptions, leverage, operational functions, and resolution in the asset management industry. Once the notice is published in the Federal Register the public will have 60 days to submit comments.

A copy of the notice is available at:

<http://www.treasury.gov/initiatives/fsoc/rulemaking/Documents/Notice%20Seeking%20Comment%20on%20Asset%20Management%20Products%20and%20Activities.pdf>

### Recovery and Resolution

#### EBA Consults on Procedures of Resolution Colleges

On December 18, 2014, the EBA issued a consultation paper on draft RTS on resolution colleges under the Bank Recovery and Resolution Directive ("BRRD"). The aim of resolution colleges is to act as a framework for information sharing and co-operation between resolution authorities. The proposed RTS deal with issues such as the operational organization of resolution colleges and relevant steps to be taken in planning as well as reaching joint decisions. The consultation closes on March 18, 2015.

The consultation is available at:

<https://www.eba.europa.eu/documents/10180/932712/EBA-CP-2014-46+%28CP+on+draft+RTS+on+Resolution+Colleges%29.pdf>.

### **EBA Consults on Procedures, Notifications and Notices of Suspension under Bank Recovery and Resolution Directive**

On December 19, 2014, the EBA issued a consultation paper which includes draft RTS on procedures, notifications and notices of suspension under the BRRD. The draft RTS state amongst other items that: (i) where an entity is considered by its management body to be failing, the national competent authority should be notified; and (ii) national competent authorities should inform resolution authorities of any notifications received from an entity. The consultation closes on March 20, 2015.

The consultation paper is available at:

<http://www.eba.europa.eu/documents/10180/935392/EBA-CP-2014-47+%28CP+on+draft+RTS+on+Notifications+and+notice+of+suspension%29.pdf>.

### **EBA Publishes Final Guidelines and Regulatory Technical Standards on Bank Resolution Plans**

On December 19, 2014, the EBA published (i) final draft RTS on the content of resolution plans and the assessment of resolvability; and (ii) final guidelines on the specification of measures to reduce or remove impediments to resolvability and the circumstances in which each measure may be applied under the BRRD. The final draft RTS and guidelines form part of the EBA's aim for a consistent approach to bank resolution across the EU. The draft RTS set out the detail of resolution plans for EU institutions as well as the criteria for resolvability assessment and the final draft guidelines supplement the RTS in specifying procedures including those for overcoming obstacles to resolvability.

The draft final RTS and guidelines are available at:

<http://www.eba.europa.eu/documents/10180/933992/EBA-RTS-2014-15+%28Final+draft+RTS+on+Resolution+Plan+Contents%29.pdf> and  
<http://www.eba.europa.eu/documents/10180/933988/EBA-GL-2014-11+%28Guidelines+on+Impediments+to+Resolvability%29.pdf>.

## **People**

### **CFTC Appointment**

On December 16, 2014, the CFTC announced the appointment of Mr Tom Smith as Interim Director for the CFTC's Division of Swap Dealer and Intermediary Oversight.

### **Council of the European Union Appoints Members of the Single Resolution Board**

On December 19, 2014, the Council of the European Union appointed the members of the Single Resolution Board. The appointments are as follows: (i) Ms Elke König as chairperson; (ii) Mr Timo Löyttyniemi as vice-chairperson; (iii) Mr Mauro Grande as strategy and coordination director; and Mr Antonio

Carrascosa, Ms Joanne Kellermann and Mr Dominique Laboureix as resolution planning directors.

## Events

January 13, 2015: ESMA open hearing on CSDR consultation papers.

January 16, 2015: EBA open hearing on materiality threshold of credit obligation past due under CRD IV (previously scheduled for January 14, 2015).

February 19, 2015: ESMA open hearing on draft RTS and ITS on the implementation of MiFID II and MiFIR.

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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