

## 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.**

### Compensation

#### EBA Report on EU Remuneration Trends

On 13 June 2014, the European Banking Authority (“EBA”) published a report on remuneration practices across the EU. The report, which is based on data collected on a consolidated basis from 2010 to 2012, illustrates the diversity in quantity and structure of pay across the EU financial sector. The report highlights that practices vary on the deferral of variable remuneration depending on the application of the proportionality principle by Member States and individual firms. The EBA is analyzing an emerging practice on the use of “position or role-based allowances” and intends to provide guidance criteria on the allocation of those elements of pay to either fixed or variable remuneration because it is concerned that the practice may lead to the cap between variable and fixed remuneration being thwarted.

The EBA report is available at:

<http://www.eba.europa.eu/documents/10180/534414/EBA+Remuneration+benchmarking+report+2010+to+2012.pdf>.

### Capital and Prudential Regulation

#### Further Secondary Legislation under CRD IV Published

On 13 June 2014, secondary legislation under the Capital Requirements Regulation (“CRR”) and the Capital Requirements Directive was published in the Official Journal of the European Union. The legislation comprised regulatory technical standards (“RTS”), setting out the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk, and implementing technical standards (“ITS”) on the information exchange between home and host Member State regulators.

The legislation is available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL\\_2014\\_174\\_R\\_0006&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_174_R_0006&from=EN) and

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2014:172:FULL&from=EN>.

#### **EBA Consults on Draft Guidelines for Pillar 3 Disclosure Waivers**

On 13 June 2014, the EBA published a consultation on proposed Guidelines for banks and investment firms wishing to utilize the Pillar 3 disclosure waivers available under the CRR. The draft Guidelines cover the process that banks and investment firms should follow and the criteria that should be applied when firms assess whether to use any waiver relating to the materiality, proprietary or confidentiality of disclosures or the frequency of disclosures. The draft Guidelines also set out the information that firms making use of a waiver should provide. The EBA anticipates that the Guidelines will be finalized by 31 December 2014 at the latest. Responses to the consultation are due by 13 September 2014.

The consultation paper is available at:

<http://www.eba.europa.eu/documents/10180/726375/EBA-CP-2014-09+Consultation+paper+on+Guidelines+Article+432+and+Article+433+CRR+disclosures.pdf>.

#### **EBA Announcement on Supervisory Reporting Templates**

The EBA announced, on 11 June 2014, that there were issues with the supervisory reporting templates included in the adopted ITS on supervisory reporting. The EBA and the European Commission have agreed that firms should use the liquidity templates published by the EBA on 2 December 2013 or the templates published by the European Commission on 16 April 2014 for liquidity reporting under the CRR until such time as the issue is corrected.

The EBA announcement is available at: <http://www.eba.europa.eu/-/eba-informs-on-liquidity-reporting-templates>.

#### **EBA Consults on Draft RTS Relating to Advanced Measurement Approaches for Operational Risk**

On 12 June 2014, the EBA launched a consultation on draft RTS that set out the criteria for national regulators to consider before granting a firm permission to use advanced measurement approaches for calculating its capital requirements for operational risk, including the minimum conditions that a firm must meet. The draft RTS are required under the CRR. Responses to the consultation are due by 12 September 2014.

The consultation paper is available at:

<http://www.eba.europa.eu/documents/10180/724762/EBA-CP-2014-08+CP+on+draft+RTS+on+AMA+assessment.pdf>.

#### **FDIC Releases Proposed Rulemaking to Amend Annual Stress Test Rule**

On 16 June 2014, the Federal Deposit Insurance Corporation (“FDIC”) announced that it is seeking comment on a notice of proposed rulemaking amending the FDIC’s Annual Stress Test rule, following similar actions by the Board of

Governors of the Federal Reserve System (“Federal Reserve Board”) and the Office of Comptroller of the Currency (“OCC”) on 12 June 2014. This proposed rule would shift back the timing of the annual stress testing cycle by approximately 90 days, and clarify that institutions covered by the Annual Stress Test rule will not have to calculate their regulatory capital ratios using the Basel III advanced approaches until the stress testing cycle begins on 1 January 2016.

The full text of the proposed rule is available at:

<http://www.fdic.gov/news/news/press/2014/pr14046a.pdf>.

#### **Federal Reserve Board Invites Comment on Proposal to Modify Regulations for Capital Planning and Stress Testing**

On 12 June 2014, the Federal Reserve Board issued a proposal to modify the regulations for capital planning and stress testing. The proposed rule would shift the start date of the capital plan and stress test cycles from 1st of October of a calendar year to 1st of January of the following calendar year. Under the proposed rule, a bank holding company with total consolidated assets of \$50 billion or more would be required to submit its capital plan and stress test results to the Federal Reserve by 5 April, three months later than under the current rulemakings.

Comments on the proposed rule will be accepted until 11 August 2014.

The full text of the proposed rule is available at:

<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20140612a1.pdf>.

#### **Federal Banking Regulators Finalize Joint Supplemental Guidance on Income Tax Allocation Agreements**

On 13 June 2014, the Federal Reserve Board, the FDIC and the OCC issued final supplemental guidance on income tax allocation agreements involving holding companies and insured depository institutions. One aim of the guidance is to reduce confusion regarding ownership of tax refunds. The guidance supplements an interagency policy statement on income tax allocation issued by the regulators in 1998 which said that a holding company that receives a tax refund from a taxing authority obtains these funds as agent for its subsidiary insured depository institutions and other affiliates. The guidance supplements the policy statement by instructing insured depository institutions and their holding companies to review their tax allocation agreements to ensure the agreements expressly acknowledge that the holding company receives any tax refunds as an agent. In addition, all banking organizations are asked to insert specific language in their tax allocation agreements to further clarify tax refund ownership.

Institutions and holding companies should implement the guidance as soon as reasonably possible, which the regulators expect would not be later than 31 October 2014.

The full text of the interagency guidance is available at:

<http://www.fdic.gov/news/news/press/2014/pr14045a.pdf>.

## Bank Structure

### OCC Issues Interim Examination Procedures to Assess Compliance with the Volcker Rule

On 12 June 2014, the OCC announced that it is issuing interim procedures for examiners to assess banks' progress in developing a framework to comply with requirements of section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (commonly known as the "Volcker Rule") and the implementing regulations adopted by the OCC with the other rule-writing agencies. The procedures emphasize identification of activities subject to the rule, assessment of banks' progress toward establishing their compliance programs, evaluation of banks' plans for conforming covered fund securitization, asset management, and sponsorship activities, and banks' progress in being able to report quantitative metrics.

The full text of the OCC interim examination procedures is available at:

<http://www.occ.gov/news-issuances/bulletins/2014/bulletin-2014-27a.pdf>.

### US Agencies Responsible for Volcker Rule Implementation Release an Initial Set of Six FAQs,

On 10 June 2014, the Federal Reserve Board, the OCC, the FDIC, the Securities and Exchange Commission ("SEC"), and the Commodity Futures Trading Commission ("CFTC") issued an initial set of six joint FAQs regarding the implementation of the Volcker Rule. The FAQs address the following topics:

- the extent to which the Volcker Rule requirements (including the Tier 1 capital deduction provision for covered fund investments) apply during the conformance period;
- the extent to which the Volcker Rule requirements (including the Tier 1 capital deduction provision for covered fund investments) apply during the conformance period;
- the definition of "trading desk" and, in particular, whether a trading desk can span multiple legal entities;
- the treatment of newly created foreign funds; specifically, confirming that a newly created fund intended to be a foreign public fund will be excluded from the definition of "covered fund" in the same fashion as a newly created fund intended to be a registered investment company under the '40 Act;
- the scope of the phrase "rights or other assets," as found in the loan securitization exemption;
- the trading metrics reporting dates; in particular, confirming that the largest institutions must begin capturing trading metrics on July 1, 2014 (with reporting commencing in August); and
- the scope of the covered fund name-sharing prohibition, including several examples of prohibited name sharing.

The full text of the FAQs is available at:

<http://www.federalreserve.gov/bankinfo/volcker-rule/faq.htm>.

## Financial Services

### UK Government Announces Review into Wholesale Financial Markets

On 12 June 2014, HM Treasury announced a joint review by the Treasury, the Bank of England and the Financial Conduct Authority (“FCA”) into the operation of the wholesale financial markets, called the “Fair and Effective Markets Review”. The Review will focus on the regulated and unregulated wholesale markets where misconduct issues have recently arisen (fixed income, currency and commodity markets, including related derivatives and benchmarks). The scope of the Review will cover trading practices, the regulatory perimeter, impact of recent and forthcoming regulation and supervision. It is anticipated that the Review will result in recommendations, to be published by June 2015. A consultation in relation to the Review will be launched in the Autumn. The Government intends to take interim measures such as (i) extending the LIBOR regulation to cover further benchmarks and to provide for criminal sanctions for LIBOR manipulation; (ii) extending the Senior Managers and Certification Regime to non-UK firms (about which, see below); and (iii) expanding the UK criminal regime for market abuse.

HM Treasury’s announcement is available at:

<https://www.gov.uk/government/news/fair-and-effective-markets-review-announced-by-chancellor-of-the-exchequer>.

### UK to Consider Extension of Senior Managers and Certification Regime to Non-UK Firms

On 12 June 2014, the Chancellor announced that HM Treasury intends to conduct a consultation on the possible extension of the senior managers and certification regime to cover UK branches of all non-UK banks and investment firms that are prudentially regulated by the Prudential Regulation Authority (“PRA”). The primary provisions on the senior managers and certification regime are set out in The Financial Services (Banking Reform) Act 2013 and allow for the extension of the regime to non-UK banks and investment firms by HM Treasury. The FCA has announced that the FCA and PRA intend to jointly consult on detailed proposals for both UK firms and non-UK firms this year.

The Chancellor’s speech which includes the announcement is available at:

<https://www.gov.uk/government/speeches/mansion-house-2014-speech-by-the-chancellor-of-the-exchequer>.

### FCA’s Final Rules on Client Assets Regime

On 10 June 2014, the FCA published its Policy Statement, including feedback and final rules, following the review of the client assets regime for investment business. Investment firms and other financial institutions that conduct investment business and hold client money, custody assets, collateral or mandates in relation to investment business, including loan-based crowdfunding firms, will need to review the new rules and change their systems and procedures to ensure compliance with the revised rules. The rules, which will become fully enforceable

on 1 June 2015, are being phased in. Firms that are a clearing member of a CCP will be permitted, subject to certain requirements being met, to offer multiple client money sub-pools for net margined omnibus client accounts at CCPs. The FCA is not extending the rules to other areas because of the complexities of operating sub-pool accounts and it appears that only other business models in terms of client money held by CCPs will be considered in the future. The rules also include a requirement that firms have an acknowledgement letter in place before they place client money in an account. For money placed with CCPs, there will be no two-way acknowledgement required, only a notification to the CCP by the firm. The revised rules do not include revisions to the rules on calculating entitlements (client money distribution rules) because the FCA intends to wait for HM Treasury to review and implement the recommendations of the review of the special administration regime. The FCA intends to consult on changes to the client money distribution rules later this year.

The FCA Policy Statement is available at:

<http://www.fca.org.uk/static/documents/policy-statements/ps14-09.pdf>.

#### **FCA Consults on Revised Client Money Rules for ISAs**

On 11 June 2014, the FCA published a consultation paper on proposed changes to its client money rules for individual savings accounts (“ISAs”). Due to changes announced in the 2014 Budget, cash will be able to be held in stocks and shares ISAs with the result that such ISAs can be used for both deposit and investment purposes. Only money held for investment purposes would currently be client money and subject to the client money rules. The FCA is therefore proposing that all moneys held within stocks and shares ISAs be held as client money. Responses to the consultation are due by 25 June 2014.

The FCA consultation paper is available at:

<http://www.fca.org.uk/static/documents/consultation-papers/cp14-09.pdf>.

#### **UK Government Announces its Intention to Issue Islamic Bonds**

On 12 June 2014, HM Treasury announced that the UK intends to issue sovereign Sukuk, the Islamic equivalent of a bond. Subject to market conditions, the government intends to issue £200 million sterling Sukuk over the next few weeks. The UK sovereign Sukuk will have a maturity of five years and will use the most common structure, Al-Ijara.

The HM Treasury press release is available at:

<https://www.gov.uk/government/news/britain-set-to-become-first-western-nation-to-issue-a-sovereign-islamic-bond>.

## Consumer Protection

### EU Guidelines on Complaints Handling for Banking and Securities Sectors

On 13 June 2014, the EBA and the European Securities and Markets Authority (“ESMA”) published their final guidelines for handling complaints in the banking and securities sectors. The guidelines, which aim to ensure a consistent approach to complaints handling across the EU, apply to national authorities responsible for supervising complaints-handling by firms and to investment firms, banks, payment and electronic money institutions and certain fund managers. The guidelines will apply two months after publication of the translated versions of the guidelines on the websites of the EBA and ESMA.

The guidelines are available at:

<http://www.eba.europa.eu/documents/10180/534414/JC+2014+43+-+Joint+Committee+-+Final+report+complaints-handling+guidelines.pdf>.

## Enforcement

### Firms Fined for Financial Promotions Failings

On 16 June 2014, the FCA announced that it had fined Credit Suisse International and Yorkshire Building Society for unclear, unfair and misleading financial promotions of Credit Suisse’s Cliquet Product. Credit Suisse International had also failed to have a procedure in place for a complete review of long running promotions from time to time. Yorkshire Building Society was a distributor of the product.

The announcement is available at: <http://www.fca.org.uk/news/fca-fines-credit-suisse-and-yorkshire-building-society-for-financial-promotions-failures>.

## People

### J. Christopher Giancarlo Sworn In as a Commissioner of the CFTC

On 16 June 2014, J. Christopher Giancarlo was officially sworn in, after being confirmed by the US Senate on 3 June 2014, to serve as a Commissioner of the CFTC.

### Lael Brainard Sworn in as Member of the Federal Reserve Board, Jerome H. Powell Sworn in for Second Term, and Stanley Fischer Sworn in as Vice Chairman of the Federal Reserve Board

On 15 June 2014, Lael Brainard took the oath of office as a member of the Federal Reserve Board. Jerome H. Powell was also sworn in for a second term on the Federal Reserve Board and Stanley Fischer was sworn in as Vice Chairman of the Federal Reserve Board.

### CFTC Chairman Massad Announces the Appointment of Aitan Goelman as Director of Enforcement

On 10 June 2014, CFTC Chairman Timothy Massad named Aitan Goelman as the agency’s Director of the Division of Enforcement.

## Events

18 June 2014: US Senate Committee on Banking, Housing and Urban Affairs hearing entitled “High Frequency Trading’s Impact on the Economy”.

18 June 2014: US House of Representatives Committee on Financial Services hearing entitled: “Allegations of Discrimination and Retaliation within the Consumer Financial Protection Bureau, Part Three”.

18 June 2014: US House of Representatives Committee on Financial Services hearing entitled: “The Semi-Annual Report of the Consumer Financial Protection Bureau”.

15 July 2014: EBA public hearing on its consultation on assessment methodologies for the use of advanced measurement approaches for operational risk.

15 July 2014: EBA public hearing on draft Guidelines related to the use of Pillar 3 disclosure waivers.

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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