

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.

Derivatives

Secondary Legislation on Procedure for Imposing Fines and Periodic Penalty Payments on Trade Repositories

On 19 June 2014, secondary legislation on the procedure for penalties imposed on trade repositories by the European Securities and Markets Authority (“ESMA”) was published in the Official Journal of the EU. The legislation, which came into force on 22 June 2014, sets out the procedures to be followed by ESMA in its power to impose fines and periodic penalty payments on trade repositories, deals with rights of defense and rights to be heard processes for trade repositories as well as limitation periods, access to files issues and calculation of periods, dates and time limits.

The legislation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2014_179_R_0006.

Regulatory Capital

EBA Decision on Reporting by Competent Authorities to the EBA is Updated

On 19 June 2014, the European Banking Authority (“EBA”) published an updated version of its decision (originally taken on 14 January 2014) on reporting by national regulators to the EBA. The decision relates to the implementing technical standards (“ITS”) on supervisory reporting under the Capital Requirements Regulation. The reporting dates have been amended so that they are in line with the new dates of the ITS, following the European Commission adoption process. The decision describes what data the EBA would expect to receive from national regulators (i.e. the data that would be collected by national regulators from systemically important institutions) and specifies the criteria to identify these systemically important institutions.

The updated decision is available here:

<https://www.eba.europa.eu/documents/10180/16082/EBA+DC+090+%28Decision+on+Reporting+by+Competent+Authorities+to+the+EBA%29.pdf/9beaf5be-2624-4e36-a75b-b77aa3164f3f>.

Federal Reserve Bank Issues FOMC Statement

On 18 June 2014, the Board of Governors of the Federal Reserve System (“Federal Reserve Board”) issued a statement from the Federal Open Market Committee (“FOMC”) which included economic projections from the FOMC meeting held from 17-18 June 2014.

The full text of the FOMC statement is available at:

<http://www.federalreserve.gov/newsevents/press/monetary/2014monetary.htm>.

Bank Prudential Regulation

European Commission Consults on Contributions by Firms to Resolution Mechanisms

On 20 June 2014, the European Commission launched a consultation on the contribution of banks to the resolution financing arrangements under the Recovery and Resolution Directive (“RRD”) and the Single Resolution Mechanism Regulation (“SRMR”). The RRD provides for, amongst other things, the resolution of failing banks and investment firms in Europe. The SRMR implements the RRD for Eurozone banks supervised under the Single Supervisory Mechanism. The consultation relates to the calculation of contributions, proportionality, the weight to be given to the flat part of the contribution vis-à-vis the risk-adjusted part and individual risk indicators. Responses to the consultation are due by 14 July 2014 and will be taken into account in the Commission’s preparation of the secondary legislation due under the RRD and the SRMR.

The consultation page is available at:

http://ec.europa.eu/internal_market/consultations/2014/credit-institutions-contributions/index_en.htm.

SSM Mediation Panel and Rules of Procedure Regulation published in OJ

On 20 June 2014, the European Central Bank (“ECB”) regulation on the establishment of a mediation panel and rules of procedure relating to the Single Supervisory Mechanism (“SSM Mediation Regulation”) came into force. Under the SSM Regulation, the ECB is required to establish a mediation panel and rules of procedure for resolving differences of views expressed by national regulatory authorities of participating member states regarding an objection by the ECB’s Governing Council to a draft decision of the Supervisory Board set up under that Regulation. The SSM Mediation Regulation deals with issues such as the establishment, composition and voting procedures of the panel, and refers to the mediation process, the handling of requests for mediation, and the panel’s decision making processes.

The SSM Mediation Regulation is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2014:179:FULL&from=EN>.

ECB Supervisory Board's Supplemented Rules of Procedure

On 21 June 2014, the rules of procedure of the supervisory board of the ECB were published in the Official Journal of the European Union. The Rules, which supplement the Rules of Procedure of the ECB, provide for procedures to be taken in the ECB's role in the prudential supervision of Eurozone banks.

The Rules are available at:
http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_182_R_0014&from=EN.

ECB Administrative Board of Review Formally Established

On 14 June 2014, a Decision of the ECB on the establishment of an administrative board of review and its operating rules was published in the Official Journal of the European Union. The administrative board of review will review decisions taken by the ECB under the Single Supervisory Mechanism on the prudential supervision of Eurozone banks. Such reviews will be undertaken on request by a bank affected by any such decision.

The Decision is available at:
http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_175_R_0017&from=EN.

PRA Revises its Approach to Banking Supervision

On 19 June 2014, the Prudential Regulation Authority ("PRA") published a revised version of its Approach to Banking Supervision. The PRA published the first version in April 2013 when it began to prudentially regulate banks and certain investment firms. The revised version incorporates new rules, objectives and approach of the PRA, including its Fundamental Rules (which replace the Principles of Business), the resolvability regime, powers to address failings in culture and amendments to the liquidity assets requirements.

The document is available at:
<http://www.bankofengland.co.uk/publications/Documents/prapproach/bankingap pr1406.pdf>.

Basel Committee Consults on Update to Guidelines for Dealing with Weak Banks

On 18 June 2014, the Basel Committee on Banking Supervision (the "Basel Committee") published for consultation a proposed update to its 2002 Supervisory guidelines for identifying and dealing with weak banks. The aim of the proposed guidelines is to provide practical guidance to bank supervisors on how to identify and deal with a weak bank. The proposed update to the guidelines takes into account the occurrences, and consequences, of the financial crisis. Responses to the consultation paper are due by 19 September 2014.

The consultation paper is available at:

<http://www.bis.org/publ/bcbs285.pdf>.

Financial Services

FCA and PRA on Addressing Failings of Standards, Governance and Culture at Firms

On 19 June 2014, the Financial Conduct Authority (“FCA”) and the PRA published their responses to the recommendation of the Parliamentary Commission on Banking Standards (“PCBS”) that regulators be given additional powers to address failings of standards at senior levels of firms. The papers set out how the FCA and PRA may use their powers to address failings in standards, governance and culture, including how each regulator can meet the PCBS’s recommendations within their supervisory model, describes how regular supervision is used to address standards, sets out how the FCA’s new ‘Enhanced Supervision’ approach is employed when serious failings are identified, describes the PRA’s powers to appoint an independent to report on a firm’s activities giving rise to concerns, including in relation to failings in culture (the “skilled persons reports”) and describes how the FCA and the PRA work together. The PRA published a separate supervisory statement on reports by skilled persons on 19 June 2014.

The FCA’s paper is available at: <http://www.fca.org.uk/static/article-type/news/tackling-serious-failings-in-firms.pdf> and the PRA paper is available at: <http://www.bankofengland.co.uk/pradocuments/publications/policy/2014/powersculture.pdf>. The PRA’s supervisory statement on reports of skilled persons is available at:

<http://www.bankofengland.co.uk/pradocuments/publications/ss/2014/ss714.pdf>.

PRA Statement on Financial Stability Information Power

On 19 June 2014, the PRA published a Statement of Policy on its power to require certain persons and firms to provide information or documents that the PRA considers are or may be relevant to the stability of the UK financial system (known as the ‘financial stability information power’). The scope of the power is wide and can be applied to both authorized and unauthorized firms. The Statement covers the circumstances when the PRA will provide prior notice and when it will not, the right to make representations and requirements on form and authentication.

The Statement is available at:

<http://www.bankofengland.co.uk/pradocuments/publications/policy/2014/fsinfover.pdf>.

PRA Introduces Fundamental Rules

On 19 June 2014, the PRA published a Policy Statement, including final rules and feedback, relating to the introduction of the PRA Fundamental Rules (which replace the Principles of Business in the PRA Handbook), information gathering,

auditors, the financial stability power (see above) and skilled persons reports (see above). The final rules came into effect on 19 June 2014.

The Policy Statement is available at:

<http://www.bankofengland.co.uk/pr/ Documents/publications/ps/2014/ps514.pdf>.

Enforcement

CFPB Orders GE Capital to Pay \$225 Million in Consumer Relief for Deceptive and Discriminatory Credit Card Practices

On 19 June 2014, the Consumer Financial Protection Bureau (“CFPB”) ordered GE Capital Retail Bank (“GE Capital”) to provide an estimated \$225 million in relief to consumers harmed by illegal and discriminatory credit card practices. GE Capital must refund \$56 million to approximately 638,000 consumers who were subjected to deceptive marketing practices. As part of the joint enforcement action by the CFPB and the US Department of Justice, GE Capital must also provide an additional \$169 million to about 108,000 borrowers excluded from debt relief offers because of their national origin.

The full text of the CFPB’s Consent Order is available at:

http://www.consumerfinance.gov/f/201406_cfpb_consent-order_synchrony-bank.pdf.

FSB Warns Firms about Conducting Business in Venezuela

On 19 June 2014, the Financial Stability Board (“FSB”) published an advisory notice to financial institutions advising that the FSB has determined that Venezuela is a non-cooperative jurisdiction for regulatory and supervisory standards on international cooperation and information exchange. Financial institutions are warned to exercise the appropriate caution when conducting business in Venezuela or with financial institutions supervised by the Venezuelan regulators.

The FSB notice is available at:

http://www.financialstabilityboard.org/press/pr_140616.pdf.

People

CFTC Announces New Principal Deputy Director and Chief Counsel of the CFTC Division of Enforcement

On 23 June 2014, the US Commodity Futures Trading Commission (“CFTC”) announced the appointment of Gretchen Lowe as Principal Deputy Director and Chief Counsel in the CFTC’s Division of Enforcement.

The full text of the CFTC press release is available at:

<http://www.cftc.gov/PressRoom/PressReleases/pr6951-14>.

SEC Names New Associate Director in the SEC Division of Corporation Finance

On 18 June 2014, the Securities and Exchange Commission (“SEC”) announced that Cicely LaMothe has been named as an associate director in the SEC’s Division of Corporation Finance.

The full text of the SEC press release is available at:

<http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542109210>.

Events

25 June 2014: US Senate Committee on Banking, Housing & Urban Affairs hearing entitled: “EXECUTIVE SESSION to Vote on Nominations, and The Financial Stability Oversight Council Annual Report to Congress.”

26 June 2014: US House Committee on Financial Services hearing entitled: “Oversight of the SEC’s Division of Trading and Markets.”

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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