

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

US Federal Reserve Board Issues Proposal on Clarifications to the Regulatory Capital Framework

On November 18, 2014, the US Board of Governors of the Federal Reserve System (“Federal Reserve Board”), along with the Federal Deposit Insurance Corporation (“FDIC”) and Office of the Comptroller of the Currency (“OCC”), issued proposals to clarify the revised regulatory capital framework adopted in July 2013 applicable to “Advanced Approaches” banking institutions – generally those with \$250 billion or more in total assets or \$10 billion or more in foreign exposure. The proposals would make technical (but substantive) revisions that will make certain definitions clearer, correct technical errors, clarify the “Advanced Approaches” rule qualification requirements and more closely align the US rules with international rules. For example, the proposal would revise the definition of residential mortgage exposure to provide that, for the purpose of calculating capital requirements under the advanced approaches, any exposure secured by a lien on residential property must be managed as part of a segment of exposures with homogenous risk characteristics, and not on an individual basis, to be considered a residential mortgage exposure. Comments are required to be submitted within 60 days of publication in the Federal Register.

The Proposal and press release are available at:

<http://www.federalreserve.gov/newsevents/press/bcreg/20141118a.htm> and
<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20141118a1.pdf>.

US Federal Reserve Board Announces Two Separate Reviews of Large Banking Organizations

On November 20, 2014, the Federal Reserve Board announced that it will issue two separate reviews on its examination program for large banking organizations. The first review will be conducted by the Inspector General and evaluate whether there are satisfactory methods for the Federal Reserve Board to acquire all

necessary information to make supervisory assessments and determinations. The review will also assess whether the right channels exist for decision-makers to be aware of divergent views regarding material issues. The second review will be led by the Federal Reserve Board, which will conduct its own similar review focusing specifically on the most systemically important financial institutions in the US.

The Director of Division of Banking Supervision and Regulation letter regarding the reviews is available at:

<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20141120a1.pdf>.

Bank Structure

Revised Comptroller's Licensing Manual Booklet

On November 19, 2014, the OCC issued the "Federal Branches and Agencies" booklet of the Comptroller's Licensing Manual, which is a revision of the same booklet issued in December 1999. The booklet's revisions address amendments in 2003 to the International Banking Act of 1978, policy considerations for conversions of state-licensed branches and agencies to federal licenses, applicable regulatory changes that address expedited approvals for branch and agency office establishments and relocations and elimination of agreements for deposit-taking by limited federal branches. The booklet also discusses new activities and operations permitted for federal branches and agencies.

The booklet of the Comptroller's Licensing Manual is available at:

<http://www.occ.gov/publications/publications-by-type/licensing-manuals/fba.pdf>

and the OCC's Approach to Federal Branch and Agency Supervision is available at:

<http://www.occ.gov/publications/publications-by-type/other-publications-reports/approach-to-fba-supervision.pdf>.

European Central Bank Opinion on Structural Measures to Improve Resilience of EU Banks

On November 21, 2014, the European Central Bank ("ECB") published an Opinion welcoming proposals for a new regulation on structural measures to improve the resilience of EU credit institutions. The proposed regulation aims to create a more harmonized EU framework where there is a risk of potential fragmentation due to different structural regimes on a national level, and is aimed at the largest EU banks. The ECB states in its Opinion that it supports the ban on proprietary trading as well as the prohibition for certain banks to own or invest in hedge funds. The ECB also suggests some amended wording to the proposed regulation, which would include further detail and clarification on the prohibited activities.

The Opinion and proposed regulation are available at:

<http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-43-EN-F1-1.Pdf>

and http://www.ecb.europa.eu/ecb/legal/pdf/en_con_2014_83_f_sign.pdf.

Compensation

European Court of Justice Advocate General's Opinion on UK's Bonus Cap Legal Challenge

On November 20, 2014, the European Court of Justice's ("ECJ") Advocate General Nilo Jääskinen issued his opinion on the legal challenge brought by the UK government, opposing variable pay caps under the Capital Requirements Directive IV ("CRD IV") package. The Advocate General proposes that the UK's plea to annul certain provisions of CRD IV that fix the ratio of variable pay to fixed remuneration should be dismissed. The opinion is not binding on the ECJ, whose judgment is expected in February 2015.

The opinion is available at:

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30d553f07a57c987483f8f7a9871bb768308.e34KaxiLc3qMb40Rch0SaxuObNr0?text=&docid=159945&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&id=634920>.

Consumer Protection

US Commodity Futures Trading Commission Launches National Campaign to Protect Consumers from Financial Fraud

On November 19, 2014, the US Commodity Futures Trading Commission ("CFTC") launched a national campaign to aid investors protect themselves against financial fraud. The campaign, which is dubbed CFTC SmartCheck, includes a new website with interactive videos aimed at helping investors spot investment offers that are potentially fraudulent. The campaign will run online, with television and print advertising planned for the coming months.

Information regarding the CFTC's campaign is available at:

<http://smartcheck.cftc.gov>.

US Federal Deposit Insurance Corporation Releases Technical Assistance Video on Consumer Financial Protection Bureau Mortgage Rules

On November 19, 2014, the FDIC released a new technical assistance video aimed at helping bank employees understand and implement capital requirements. The video specifically covers the Ability to Repay and Qualified Mortgage Rule. The FDIC plans to release an additional two videos in the upcoming months which will address rules concerning mortgage servicing and loan originator compensation.

The Technical Assistance Video Program resource center is available at:

<https://www.fdic.gov/regulations/resources/director/video.html>.

US Consumer Financial Protection Bureau Proposes Expanded Foreclosure Protections

On November 20, 2014, the Consumer Financial Protection Bureau introduced additional measures aimed to ensure that mortgage servicers are treating homeowners and struggling borrowers fairly. Among other things, the main points presented in the proposal would require servicers to provide certain borrowers with foreclosure protections more than once over the life of the loan, expand consumer protections to surviving family members and other homeowners, require servicers to notify borrowers when loss mitigation applications are complete, protect struggling borrowers during servicing transfers and provide more information to borrowers in bankruptcy. The proposed rule will be open for public comment for 90 days after publication in the Federal Register.

A summary and a copy of the proposed rule are available at:

http://files.consumerfinance.gov/f/201411_cfpb_summary_mortgage-servicing-proposed-rule.pdf and
http://files.consumerfinance.gov/f/201411_cfpb_proposed-rule_mortgage-servicing.pdf.

Derivatives

IOSCO Consults on Post-Trade Transparency in the Credit Default Swaps Market

On November 17, 2014, the International Organization of Securities Commissions (“IOSCO”) issued a consultation report on post-trade transparency in the credit default swaps (“CDS”) market, analyzing the possible effects resulting from mandatory post-trade transparency in the CDS market. The report states that the introduction of mandatory post-trade transparency does not have a substantial effect on market risk exposure or market activity, and that greater post-trade transparency, including making the price and volume of individual transactions publicly available, is highly valuable to market participants. IOSCO identifies the benefits and costs of mandatory post-trade transparency, recommends that its members take measures to increase post-trade transparency in their jurisdiction and provides a list of factors that may help minimize related potential costs. The consultation closes on February 15, 2015.

The consultation is available at:

<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD465.pdf>.

Enforcement

Former Director of Imperial Consolidated Group Fined for Defrauding Investors

On November 14, 2014, convicted former director of investment firm Imperial Consolidated Group, William Godley, was ordered by the UK’s High Court to pay a confiscation order of approximately £1.5 million. William Godley was convicted in 2010 and sentenced to 3.5 years in jail for defrauding around 3,000 investors of

about £250 million. He was also disqualified from acting as a company director for six years. The whole amount of the order will be paid to victims as compensation and any default will give rise to a three-year imprisonment sentence.

The court's judgment is available at:

<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/QB/2014/2343.html&query=godley&method=boolean>.

Chase de Vere Fined for Mis-selling Investment Products

On November 17, 2014, the UK Financial Conduct Authority ("FCA") fined Chase de Vere Independent Financial Advisers £560,000 for mis-selling Keydata life settlement products. The firm was found to have insufficiently researched the product to understand its risks and failed to ensure that firm advisors understood those risks. This led to staff ineptly explaining those risks to customers. Advisors were also not provided with standardized wording to help them describe the risks to customers.

The FCA notice is available at:

<http://www.fca.org.uk/static/documents/final-notices/chase-de-vere-independent-financial-advisers-limited.pdf>.

Lower Iveagh Credit Union in Liquidation

On November 19, 2014, Northern Irish Lower Iveagh Credit Union was placed into liquidation. Auditors have stated that loan and share balances in the last set of published accounts appeared to be materially incorrect. The Financial Services Compensation Scheme ("FSCS"), which protects up to £85,000 in deposits and investments in the event of regulated firms going into liquidation, will pay compensation to each member of the credit union.

The FSCS press release is available at:

<http://www.fscs.org.uk/news/2014/november/lower-iveagh-credit-union-decl-v9hu8yh1x>.

UK Regulators Fine Banks for Inadequate IT Systems

On November 20, 2014, following a joint investigation, the FCA and Prudential Regulation Authority ("PRA") each issued a notice fining Royal Bank of Scotland plc, National Westminster Bank plc and Ulster Bank Ltd (which are all part of the same group) a total of £56 million for having inadequate IT systems and controls in place to manage IT risks, which led to serious IT incidents involving about 6.5 million customers, mostly retail, for several weeks. The IT incidents led to customers not being able to access or use their accounts online, obtain accurate balances from ATMs, or withdraw money in foreign countries. Incorrect credit and debit interest was applied to accounts and inaccurate bank statements were produced. The underlying cause of the incident was a software incompatibility problem.

The final notices are available at:

<http://www.fca.org.uk/static/documents/final-notices/rbs-natwest-ulster-final-notice.pdf> and

<http://www.bankofengland.co.uk/pr/Documents/supervision/enforcementnotices/en201114.pdf>.

Financial Market Infrastructure

US Securities and Exchange Commission Adopts Rules to Improve Systems Compliance and Integrity

On November 19, 2014, the US Securities and Exchange Commission (“SEC”) voted to approve new rules aimed at strengthening the technology infrastructure of the US securities markets. The rules known collectively as Regulation Systems Compliance and Integrity (“Regulation SCI”) impose requirements on certain market participants in order to reduce the number of systems issues and mitigate negative market effects when such issues do occur.

Under Regulation SCI, key market participants that will be required to have extensive policies and procedures in place for their technological systems include self-regulatory organizations, certain alternative trading systems, plan processors and certain exempt clearing agencies. The new rules become effective 60 days after publication in the Federal Register. Entities subject to Regulation SCI generally must comply with the requirements nine months after the effective date.

Recovery & Resolution

US Securities and Exchange Commission Staff Releases Accounting Bulletin to Update Guidance on Pushdown Accounting

On November 18, 2014, the SEC’s Office of the Chief Accountant and Division of Corporation Finance released Staff Accounting Bulletin (“SAB”) No.115 to retract portions of interpretive guidance on pushdown accounting which it includes in its SAB series. The new SAB rescinds SAB Topic 5.J. entitled “New Basis of Accounting Required in Certain Circumstances”. The new SAB is intended to bring existing guidance in accordance with Accounting Standards Update No. 2014-17 – Business Combinations (Topic 805): Pushdown Accounting, a consensus of the FASB Emerging Issues Task Force, which was sanctioned by the Financial Accounting Standards Board on October 8, 2014.

Staff Accounting Bulletin No. 115 is available at:

<http://www.sec.gov/interps/account/sab115.pdf>

Accounting Standards Update No. 2014-17 is available at:

http://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176164564812&acceptedDisclaimer=true

US Commodity Futures Trading Commission Seeks Public Comment on Scope and Composition of New Advisory Committee

On November 19, 2014, CFTC commissioner Sharon Y. Bowen, sponsor of the CFTC's newly formed Market Risk Advisory Committee ("MRAC"), invited public input on MRAC's composition and priorities through a Federal Register release. The specific issues for comment include recommendations on how to improve market structure and mitigate risk, as well as proposals on how to nominate individuals for membership on the MRAC. The comment period ends on December 3, 2014.

The notice in the Federal Register is available at:

<http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2014-27279a.pdf>

European Commission Proposes Regulation for Uniform Conditions for Single Resolution Fund

On November 24, 2014, the European Commission proposed a new regulation to specify uniform conditions for contributions to the Single Resolution Fund ("SRF"), an essential part of the Single Resolution Mechanism which implements the Bank Recovery and Resolution Directive for Eurozone banks and banks from other EU Member States that have opted into the Single Supervisory Mechanism. The SRF is a fund owned and administered by the Single Resolution Board. It is financed through contributions from the banking sector in Member States participating in the SRF, and aims to ensure financial stability without recourse to taxpayers' money. The proposed regulation provides for the annual contributions of banks and the reporting by banks of information which will be used to calculate such annual contributions.

The proposal is available at:

<http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-710-EN-F1-1.Pdf>

UK Treasury Committee Publishes Seventh Report on Recommendations of Parliamentary Commission on Banking Standards

On November 17, 2014, the Treasury Committee published a report on the implementation of the recommendations of the Parliamentary Commission on Banking Standards ("PCBS"). The report assesses the progress made by the UK government to implement PCBS recommendations, and finds that, although some statutory recommendations have been implemented through the Financial Services (Banking Reform) Act 2013, details of some of those provisions are still emerging. The report deals with issues such as individual responsibility, corporate governance, remuneration, competition and enforcement, and recognizes that a number of the most significant PCBS recommendations have also been implemented in non-statutory ways, such as the leverage ratio and the changes made to the existing Remuneration Code.

The report is available at:

http://www.parliament.uk/documents/commons-committees/treasury/PCBS_Report.pdf.

People

US Federal Reserve Board Announces Chairs and Deputy Chairs for 2015

On November 19, 2014, the Federal Reserve Board announced the 2015 designation of chairs and deputy chairs for the 12 regional Federal Reserve Banks.

Events

December 2, 2014: FCA Enforcement Conference 2014.

December 9, 2014: CFTC Agricultural Advisory Committee meeting.

December 17, 2014: SEC Advisory Committee on Small and Emerging Companies.

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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