



Financial Regulatory Developments Focus

In this newsletter, we provide a snapshot of the principal US, European and global financial regulatory developments of interest to banks, investment firms, broker-dealers, market infrastructures, asset managers and corporates.

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Bank Prudential Regulation & Regulatory Capital

European Banking Authority's Second Report on Impact of Liquidity Coverage Ratio

On January 15, 2015, the European Banking Authority (“EBA”) published its second impact assessment report for the liquidity coverage ratio (“LCR”) requirements under the Capital Requirements Directive IV (“CRD IV”) package. The report is based on data provided by 322 European banks and concludes that the LCR is not expected to have a material detrimental impact on the business and risk profile of EU-established institutions. This is mainly because EU institutions have significantly improved their compliance with LCR requirements and the potential for making adjustments to balance sheets to meet LCR requirements.

The report is available at: <http://www.eba.europa.eu/documents/10180/950548/2014+LCR+IA+report.pdf>.

Delegated Regulations under CRD IV Published in Official Journal of the European Union

On January 17, 2015, the following Delegated Regulations supplementing CRD IV were published in the Official Journal of the European Union:

1. Delegated Regulation on the liquidity coverage requirement for credit institutions covering matters such as stress scenarios, the composition of the liquidity buffer and the general requirements for liquid assets. This Delegated Regulation will enter into force on February 6, 2015.
2. Delegated Regulation on the leverage ratio covering matters such as the calculation of the leverage ratio and the exposure value of derivatives. This Delegated Regulation entered into force on January 18, 2015.

The Delegated Regulations are available at:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_011_R_0001&from=EN; and

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_011_R_0002&from=EN.

Prudential Regulation Authority Consultation on Capital Adequacy under CRD IV

On January 19, 2015, the Prudential Regulation Authority (“PRA”) published a consultation paper on assessing Pillar 2 capital adequacy under CRD IV. Pillar 2 aims to ensure that firms have sufficient capital to cover potential risks not sufficiently addressed in the prescriptive Pillar 1 requirements. The consultation paper sets out proposed changes to the current framework, rules and supervisory statements, focusing on: (i) new proposed methodologies for determining Pillar 2A capital (which aims to strengthen the relationship between an institution’s risk profile, risk management and risk mitigation systems); (ii) the buffer and the form it would take; (iii) governance and risk management; and (iv) disclosure. The consultation period closes on April 17, 2015. The PRA plans to publish its policy statement and final rules together with a supervisory statement in July 2015. It is expected that the new rules would apply from January 1, 2016.

The consultation paper is available at: <http://www.bankofengland.co.uk/pru/Pages/publications/cp/2015/cp115.aspx>.

Capital Buffers and Macro-prudential Measures Amendment Regulations Published

On January 13, 2015, HM Treasury published the Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) Regulations 2015 (“the Amending Regulations”) together with an explanatory memorandum. The Regulations amend the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, which implemented all of the capital buffers under CRD IV except for the Systemic Risk Buffer (“SRB”) and the Other Systemically Important Institutions buffer. The Amending Regulations introduce the SRB for banks and investment firms. Capital buffers require firms to hold additional amounts of capital on top of their minimum capital requirements. Under CRD IV, member states are able to decide which firms should meet the SRB and must notify the European Commission, European Systemic Risk Board, European Banking Authority and national regulators of the reasons for use of the SRB. The SRB would apply to banks and building societies with deposits of more than £25 billion (i.e. it will apply to ring-fenced banks under the bank structural reform requirements), The Financial Policy Committee of the Bank of England (“BoE”) will be responsible for setting the SRB and the PRA will apply the SRB on an entity-by-entity basis. The SRB is applicable from January 1, 2019.

The Regulations are available at: http://www.legislation.gov.uk/uksi/2015/19/pdfs/uksi_20150019_en.pdf and the explanatory memorandum is available at: http://www.legislation.gov.uk/uksi/2015/19/pdfs/uksiem_20150019_en.pdf.

Derivatives

US Securities and Exchange Commission Adopts Final Rules Concerning Security-Based Swap Data Repositories

On January 14, 2015, the US Securities and Exchange Commission (“SEC”) adopted final rules regarding security-based swap data repository (“SDR”) registration, duties and core principles in accordance with Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), which authorizes the SEC to regulate security-based swaps and to take steps to encourage accountability and transparency in this market. Adopted under the Securities Exchange Act of 1934, the final rule establishes a registration process for SDRs and requires SDRs to comply with certain duties and core principles regarding maintaining data and when and how a repository’s data could be accessed. It also establishes a requirement for SDRs to have a Chief Compliance Officer and other governance requirements. The SEC’s rules require all swaps to be reported within twenty-four hours until more study is done to refine the timing.

The press release on the FDIC website is available here: <http://www.sec.gov/news/pressrelease/2015-6.html> and a related SEC Open Meeting Agenda is available here: <http://www.sec.gov/news/openmeetings/2015/agenda011415.htm>.

Memorandum of Understanding between European Securities and Markets Authority and Hong Kong Securities and Futures Commission

On January 16, 2015, the European Securities and Markets Authority (“ESMA”) published the Memorandum of Understanding (“MoU”) it entered into with the Hong Kong Securities and Futures Commission (“SFC”) on December 19, 2014. The MoU was established further to the European Markets Infrastructure Regulation (“EMIR”), under which ESMA is required to set out cooperation arrangements between ESMA and non-EU authorities whose legal and supervisory framework for central counterparties (“CCPs”) are deemed to be equivalent to the European requirements. The MoU provides ESMA with the tools to monitor the ongoing compliance of CCPs with the recognition conditions under EMIR and deals with topics such as requests for information, on-site inspections and confidentiality. The MoU is effective from December 19, 2014.

The MoU is available at: <http://www.esma.europa.eu/news/ESMA-cooperate-Hong-Kong-SFC-CCPs?t=326&o=home>.

Financial Market Infrastructure

US-EU Financial Market Regulatory Dialogue Meeting

On January 12, 2015, the participants of the US-EU Financial Market Regulatory Dialogue met to discuss key regulatory topics including the implementation of Basel III capital, leverage, derivatives reforms, benchmarks and developments on cross-border resolution. Amongst other issues, the Financial Stability Board’s proposals for an international minimum standard on total loss absorbing capacity were welcomed and EU participants raised concerns about the Volcker Rule’s effect on foreign funds. The participants included representatives of the European Commission, ESMA, SEC, US Treasury, Board of Governors of the Federal Reserve System (“Federal Reserve Board”), Federal Deposit Insurance Corporation (“FDIC”) and Commodity Futures Trading Commission. The next meeting will take place in Brussels, Belgium in July 2015.

The joint US-EU Financial Market Regulatory Dialogue statement is available at: http://ec.europa.eu/finance/general-policy/global/index_en.htm#dialogues.

Financial Services

The US Office of the Comptroller of the Currency Issues Revised Comptroller’s Handbook Booklets

- On January 14, 2015, the Office of the Comptroller of the Currency (“OCC”) issued the “Retail Nondeposit Investment Products” booklet of the Comptroller’s Handbook which replaces a similarly titled booklet issued in February 1994. This revised booklet provides updated guidance to examiners on national banks and federal savings associations regarding the recommendation or sale of nondeposit investment products to retail customers. It includes an overview of bank delivery channels and the regulatory structure and requirements supplementary with banks offering these products. The revised booklet describes the risks inherent in offering such products and offers a framework for managing such risks.
- On January 14, 2015, the OCC issued the “Conflicts of Interest” booklet of the Comptroller’s Handbook which replaces a booklet of the same title issued in June 2000. This booklet has been revised to include the supervision of federal savings

associations and includes updated guidance for examiners on risks and expected controls over conflicts of interest that may arise in asset management activities. The booklet explains the risks inherent in such conflicts and provides a structure for managing those risks.

- On January 16, 2015, the OCC issued the “Litigation and Other Legal Matters” booklet of the Comptroller’s Handbook which replaces the booklet of the same title issued in February 2000. The revised booklet provides guidance to examiners assessing a bank’s litigation exposures, associated risks, and risk management practices.

The booklet titled “Retail Nondeposit Investment Products” is available at:

<http://www.occ.gov/publications/publications-by-type/comptrollers-handbook/o-rnip.pdf>.

The booklet titled “Conflicts of Interest” is available at:

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

The booklet titled “Litigation and Other Legal Matters” Booklet is available at:

<http://www.occ.gov/publications/publications-by-type/comptrollers-handbook/pub-ch-m-litigation-and-other-legal-matters.pdf>.

US Securities and Exchange Commission Fee Rate Advisory #3 for Fiscal Year 2015

On January 15, 2015, the SEC announced that beginning on February 14, 2015, the rates applicable to most securities transactions will be set at \$18.40 per million dollars. Each self-regulatory organization will continue to pay the SEC a rate of \$22.10 per million for transactions occurring on charge dates through February 13, 2015 and will begin paying the new quoted rate on charge dates on or after February 14, 2015. The assessment on security futures transactions will remain unchanged at \$0.0042 for each round turn transaction.

The SEC order is available at: <http://www.sec.gov/rules/other/2015/34-74057.pdf>.

Recovery & Resolution

US Agencies Release Public Sections of Resolution Plans

On January 15, 2014, the Federal Reserve Board and the FDIC made portions of resolution plans, for firms with generally less than \$100 billion in qualifying nonbank assets, publically available. Certain banking organizations with total consolidated assets of \$50 billion or more and nonbank financial companies designated for enhanced prudential supervision by the Financial Stability Oversight Council are required to periodically submit resolution plans to the Federal Reserve Board and the FDIC. A resolution plan contains both a public and confidential section describing the company’s strategy for rapid and orderly resolution in the event of material financial distress or failure of the company.

The FDIC also released the public sections of the recently filed resolution plans of 22 insured depository institutions, the majority of which are subsidiaries of bank holding companies. The insured depository institution plans are mandated by a separate regulation issued by the FDIC requiring a covered insured depository institution with assets greater than \$50 billion to submit a plan under which the FDIC might resolve the institution under the Federal Deposit Insurance Act.

The public portions of resolution plans required by the Federal Reserve Board are available at:

<http://www.federalreserve.gov/bankinforeg/resolution-plans.htm> and the public portions of resolution plans required by the FDIC are available at: <https://www.fdic.gov/regulations/reform/resplans/>.

European Banking Authority Consults on Procedures, Forms and Templates under the Bank Recovery and Resolution Directive

On January 14, 2015, the EBA published for consultation draft Implementing Technical Standards (“ITS”) which set out the procedures, forms and templates for the preparation of resolution plans by resolution authorities. To obtain the information needed to prepare a resolution plan for a particular firm, the EBA is proposing that resolution authorities first request the information from the firm’s national regulator. If the national regulator does not have the relevant information or the information is not available in the required format, then the resolution authority may approach the firm directly for the information. When a firm provides the information to the resolution authority, it must do so using the proposed forms and templates. The forms and templates are in Excel format and cover organizational structure, governance and management, critical functions and core business lines, critical counterparties, structure of liabilities, funding sources, off-balance sheet, payment systems, information

systems, interconnectedness, authorities and legal framework, in line with the required information under the Bank Recovery and Resolution Directive (“BRRD”). The forms and templates will be the minimum set of harmonized information which group-level resolution authorities must share with the EBA, relevant EU resolution authorities and national regulators, as required under the BRRD. Responses to the consultation are due by April 14, 2015.

The consultation paper is available at:

<http://www.eba.europa.eu/documents/10180/948691/EBA-CP-2015-01+%28Draft+CP+ITS+Reporting+Resolution+planning%29.pdf>.

Delegated Regulation under the Bank Recovery and Resolution Directive Published in Official Journal of the European Union

On January 17, 2015, the Delegated Regulation on ex ante contributions to resolution financing arrangements supplementing the BRRD was published in the Official Journal of the European Union. The Delegated Regulation deals with issues including the determination of annual contributions, risk adjustments and annual contributions of small institutions. The Delegated Regulation enters into force on February 6, 2015.

The Delegated Regulation is available at:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_011_R_0003&from=EN.

UK Regulators Publish Final Rules Implementing the Bank Recovery and Resolution Directive

On January 16, 2015, the UK’s PRA and Financial Conduct Authority (“FCA”) published their policy statements including final rules implementing the BRRD. The PRA also published supervisory statements on resolution and recovery planning. The PRA rules will apply to banks, building societies and PRA-designated investment firms from January 19, 2015. However, the requirement for contractual recognition of bail-in will be phased in from February 19, 2015. The obligation will apply to any debts issued, entered or arising after February 19, 2015 which are an unsecured liability, an Additional Tier 1 instrument or a Tier 2 instrument. From December 31, 2015, the obligation will apply to all liabilities entered by relevant firms issued, entered or arising after December 31, 2015.

The PRA was asked to allow smaller firms to submit recovery plans in a simpler form and less frequently but the PRA has decided not to do so. Smaller firms whose key prudential metrics do not change over the course of a year may decide that the information, plans and triggers from the previous year continue to be appropriate. Globally systemically important firms must include four scenarios in their recovery plans, other firms must include three. The PRA expects firms to use existing stress testing as the foundation to build scenarios. Third country branches will not be required to prepare resolution plans as a matter of course. If the PRA considers that the resolution planning that applies to the whole firm is not suitable, it may require that branch to submit a recovery plan. The PRA is keeping the requirement for trading book wind-down analysis and information to be included in the recovery plan for firms with large trading books, albeit the BRRD does not require such information.

The FCA rules will apply from January 19, 2015, except for the requirement for contractual recognition of bail-in which will apply from January 1, 2016. The FCA rules apply to investment firms that are prudentially regulated by the FCA that are IFRU 730K firms and group entities where the group includes a 730k investment firm or credit institution. The FCA is phasing in the time from which relevant firms will need to submit recovery plans, starting with the largest firms at the end of June this year. By June 30, 2016, all relevant firms will be required to file recovery plans with the FCA. Large firms will need to file annual recovery plans while smaller firms need only submit the plans every two years. Relevant firms will also need to submit information for resolution planning to the FCA, with larger firms filing the information by June 30, 2015 (and every two years thereafter) and smaller firms filing the information from December 31, 2015 (and every three years thereafter). The FCA and the PRA are the UK national regulators under the BRRD and the BoE is the appointed resolution authority.

The PRA policy statement and final rules are available at:

<http://www.bankofengland.co.uk/pradocuments/publications/ps/2015/ps115.pdf>; the supervisory statements are available at:

<http://www.bankofengland.co.uk/pradocuments/publications/ss/2015/ss1813update.pdf> and

<http://www.bankofengland.co.uk/pradocuments/publications/ss/2015/ss1913update.pdf>; and the FCA policy statement and final

rules are available at: <http://www.fca.org.uk/static/documents/policy-statements/ps15-02.pdf>.

People

New US Federal Deposit Insurance Corporation General Counsel

On January 15, 2015, the FDIC announced the appointment of Charles Yi as the agency's new general counsel.

New CEO for UK Banking Standards Review Council

On January 13, 2015, the UK Banking Standards Review Council appointed Alison Cottrell as its first Chief Executive from April 2015.

Three New Heads of Department Appointed by UK Payment Systems Regulator

On January 14, 2015, the UK Payment Systems Regulator announced three new senior appointments: Carole Begent as head of legal from April 1, 2015; Mark Falcon as head of regulatory policy and strategy from March 2, 2015; and Louise Buckley as head of stakeholder engagement and communications from January 26, 2015.

Events

- February 4, 2015: US federal banking agencies will hold an outreach meeting at the Federal Reserve Bank of Dallas as part of their regulatory review under the Economic Growth and Regulatory Paperwork Reduction Act of 1996.
- February 23-25, 2015: The OCC will host a workshop in Miami at the Miami Hyatt Regency for directors of national community banks and federal savings associations.
- February 19, 2015: ESMA is holding an open hearing on the issues covered in its consultation on the Markets in Financial Instruments Directive and Markets in Financial Instruments Regulation published in December 2014.
- February 27, 2015: EBA is holding an open hearing on the ITS on procedure, minimum forms and templates for resolution plans under the BRRD.

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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