



Financial Regulatory Developments Focus

In this week’s 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

US Office of the Comptroller of the Currency Releases Community Reinvestment Act Evaluations

On January 23, 2015, the US Office of the Comptroller of the Currency released a list of Community Reinvestment Act (“CRA”) performance evaluations that became public during the period of December 1, 2014 through December 31, 2014. The CRA requires each federal bank regulatory agency to assess each federally insured institution's record of helping to meet the credit needs of its entire community, consistent with safe and sound lending. The list only includes national banks, federal savings associations and insured federal branches of foreign banks. The possible rating categories are as follows: outstanding, satisfactory, needs to improve and substantial noncompliance. Of the thirty evaluations made public, two were rated outstanding and twenty-eight were rated satisfactory.

The list of evaluations is available at: <http://www.occ.gov/static/cra/dec14.html>.

Amendment to Regulation on Supervisory Reporting of Institutions on Asset Encumbrance, Single Data Point Model and Validation Rules

On January 21, 2015, the EU Implementing Regulation which amends the Regulation laying down Implementing Technical Standards on supervisory reporting of institutions regarding asset encumbrance, single data point model and validation rules under the Capital Requirements Directive IV (“CRD IV”) package was published in the Official Journal of the European Union. The amendments include changes on: (i) the format and frequency of reporting on asset encumbrance on an individual and consolidated basis; (ii) first reporting reference dates; and (iii) validation rules. The Implementing Regulation enters into force on February 10, 2015.

The Implementing Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_014_R_0001&from=EN.

European Banking Authority Amends Final Draft Regulatory Technical Standards on Prudent Valuation

On January 23, 2015, the European Banking Authority (“EBA”) published draft amended final Regulatory Technical Standards (“RTS”) on prudent valuation of fair-valued positions under the Capital Requirements Regulation (“CRR”). The draft RTS, initially published in March 2014, specified the conditions under which prudent valuation requirements should be applied and introduced a methodology to calculate additional valuation adjustments in the form of two approaches: the simplified approach and the core approach. The revised draft RTS contain small amendments replacing all occurrences in Articles 9 and 10 of the word “volatility” to the word “variance.” This affects institutions using the core approach only, and relaxes the calibration of the volatility test, giving more flexibility in the implementation of the prudent valuation framework. The EBA suggests that the calibration of the volatility test should be revised within the first two years of implementation.

The revised RTS are available at: <http://www.eba.europa.eu/documents/10180/642449/EBA-RTS-2014-06+RTS+on+Prudent+Valuation.pdf>.

UK Regulator Publishes Updated Version of Supervisory Statement on Third-Country Equivalence Aspects of Credit Risk Provisions

On January 23, 2015, the UK’s Prudential Regulation Authority (“PRA”) published an updated version of its supervisory statement on the approach it will take under the CRR on credit risk treatments of exposures to third country counterparties, and for recognized exchanges. Initially, the supervisory statement set out the approach that was to be taken by the PRA on certain credit risk treatments under the CRR, where relevant third country equivalence determinations had not yet been made by the European Commission. It also set out the individual markets and exchanges that qualified as recognized exchanges under the CRR in the absence of a determination by the European Commission. Further to the binding decision of the European Commission that came into effect on January 1, 2015 (which published the names of third countries that apply supervisory and regulatory arrangements at least equivalent to those applied in the EU), the section in the supervisory statement dealing with this topic no longer applies and has therefore been deleted.

The updated supervisory statement is available at:

<http://www.bankofengland.co.uk/prd/Documents/publications/ss/2015/ss2013update.pdf>; and the European Commission's Decision is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0908&from=EN>.

Basel Committee Work Program for 2015 and 2016

On January 21, 2015, the Basel Committee on Banking Supervision ("Basel Committee") published its work program for 2015 and 2016. The program is based around four themes: (i) policy development; (ii) the balance between simplicity, comparability and risk sensitivity across the regulatory framework; (iii) monitoring and assessing implementation of the Basel framework; and (iv) improving the effectiveness of supervision. The Basel Committee's work program states its objectives, which include restoring confidence in capital ratios, continuing to revise existing methods of measuring risk-weighted assets, assessing the role of stress testing, reviewing the regulatory treatment of sovereign risk as well as assessing the interaction of reform policies overall.

The work program is available at: http://www.bis.org/bcbs/about/work_programme.htm.

Basel Committee Second Progress Report on Adoption of Principles for Effective Risk Data Aggregation and Risk Reporting

On January 23, 2015, the Basel Committee published its second progress report on the adoption by banks of its Principles for effective risk data aggregation and risk reporting. The Principles are to be implemented by global systemically important banks ("G-SIBs") by 2016, and aim to strengthen risk data aggregation and risk reporting at banks so that risk management and decision-making practices are improved. The report details the progress that G-SIBs have made and the measures that they have taken to comply with the Principles. Fourteen out of the thirty-one G-SIBs have stated that they will not be able to comply with the principles by the 2016 deadline. The report also states that national regulators are recommended to apply the Principles to domestic systemically important banks (known as D-SIBs) from three years after they have been identified as such.

The report is available at: <http://www.bis.org/bcbs/publ/d308.pdf>.

Consumer Protection

US Consumer Financial Protection Bureau Finalizes Minor Changes to "Know Before You Owe" Mortgage Rules

On January 20, 2015, the Consumer Financial Protection Bureau finalized two minor modifications to the "Know Before You Owe" mortgage disclosure rules. The changes, which were originally proposed in October 2014, identify when consumers will receive updated disclosures after locking in an interest rate and address how consumers receive information regarding certain construction loans. Under the finalized rule, creditors are required to provide a revised loan estimate within three business days after a consumer locks in a floating interest rate, as opposed to the original rule which required a revised loan estimate on the date a rate was locked. The second change creates a space on the loan estimate form where creditors could include language informing consumers that they may receive a revised loan for a construction loan that is expected to take more than 60 days to settle. The rule will be effective on August 1, 2015.

The final rule is available at: http://files.consumerfinance.gov/f/201501_cfpb_final-rule_trid.pdf.

Derivatives

US Commodity Futures Trading Commission Issues No-Action Relief to Introducing Brokers

On January 23, 2015, the US Commodity Futures Trading Commission ("CFTC") issued no-action relief for CFTC Regulations 1.10 and 1.17, respectively. The relief pertains to certain introducing brokers ("IB") regarding net capital and financial reporting requirements. The no-action relief allows foreign-domiciled IBs to file audited and unaudited form 1-FR-IBs, utilizing local accounting principles in effect where the IB is located in lieu of US Generally Accepted Accounting Principles or International Financial Reporting Standards.

The CFTC Staff Letter 15-02 is available at: <http://www.cftc.gov/ucm/groups/public/@llettergeneral/documents/letter/15-02.pdf>.

Enforcement

UK Financial Conduct Authority Takes Further Action for Misconduct relating to LIBOR

On January 22, 2015, the UK Financial Conduct Authority (“FCA”) imposed a fine on two former senior executives of Martin Brokers (UK) Ltd and banned them from performing significant influence functions at financial services firms. The sanctions relate to compliance and cultural failings that contributed to misconduct relating to the London Interbank Offered Rate (“LIBOR”). The FCA found that David Caplin and Jeremy Kraft contributed to a culture that allowed LIBOR manipulation to take place. They were also found to have enabled the misconduct to continue unnoticed over an extended period of time. David Caplin was fined £300,000 and Jeremy Kraft was fined £150,000. Both individuals settled at an early stage of the investigation and qualified for a 30% discount under the FCA’s settlement discount scheme. These are the first fines issued by the FCA to individuals holding significant influence functions for failings that contributed to LIBOR misconduct.

Financial Market Infrastructure

US Federal Reserve Issues “Strategies for Improving the US Payment System”

On January 26, 2015, the US Federal Reserve issued “Strategies for Improving the US Payment System” which introduces a plan for collaborating with payment system stakeholders. The plan aims to enhance the efficiency of the US payment system and caters to large and small businesses, emerging payments firms, card networks, payment processors, consumers and financial institutions. The paper outlines the Federal Reserve’s intent to create a task force to identify a more effective approach to safer and faster payment capabilities. To further clarify the details on payment system improvement the Federal Reserve will host a webcast at 1:00 PM Eastern Time on January 29, 2015. The webcast will share views on the Federal Reserve’s vision for the future US payment system and plans for collaborating with stakeholders to achieve shared goals. In addition, a subsequent series of FedForum teleseminars on February 4 and 10 will present an overview of the strategies and a question-and-answer session.

Access to the webcast is available at: www.ustream.tv/federalreserve; registration for the FedForum events is available at: <https://fedpaymentsimprovement.org>; and the US Federal Reserve paper is available at: <https://fedpaymentsimprovement.org/wp-content/uploads/strategies-improving-us-payment-system.pdf>.

Financial Services

Amendment to Regulation on Notification of Significant Net Short Positions in Sovereign Debt

On January 23, 2015, a Delegated Regulation correcting the Regulation on notification of significant net short positions in sovereign debt (which supplements the Short Selling Regulation) was published in the Official Journal of the European Union. The amended article of the Regulation originally only referred to the notification threshold on significant net short positions in shares, but should also have referred to the notification threshold on significant net short positions in sovereign debt. The correcting Delegated Regulation rectifies this omission, to avoid legal uncertainty. The Delegated Regulation enters into force on February 12, 2015.

The Delegated Regulation is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2015:016:FULL&from=EN>.

Financial Conduct Authority Finalised Guidance on Retail Investment Advice

On January 22, 2015, the FCA issued its Finalized Guidance on retail investment advice, which aims to explore and clarify the barriers and boundaries affecting market development. The guidance follows on from the FCA's two consultations on the topic and focuses on what may constitute a personal recommendation for retail investments. The guidance also discusses how firms should communicate with customers so that required information is passed on to customers in an accessible and understandable format, and deals with the concept of regulated advice, generic advice, focused advice and personal advice, and well as what amounts to investment advice under Markets in Financial Instruments Directive.

The Finalized Guidance is available at: <http://www.fca.org.uk/static/documents/finalised-guidance/fg15-01.pdf>.

UK Government Publishes Draft Legislation on Criminal Sanctions for Insider Dealing and Market Manipulation in the Wholesale Energy Markets

On January 22, 2015, the UK Department of Energy & Climate Change ("DECC") published its response to the consultation to strengthen the regulation of wholesale energy markets through criminal offences together with draft legislation to implement new criminal sanctions for insider dealing and market manipulation. The new sanctions will give more power to the relevant regulators (in Great Britain, Ofgem and in Northern Ireland, the Northern Ireland Authority for Utility Regulation) to address market abuse in the wholesale energy markets. The new powers implement the EU regulation on energy market integrity and transparency ("REMIT") requirement for Member States to create penalties for breach of REMIT that are proportionate, effective and dissuasive. REMIT applies to spot trading in the electricity and natural gas market. The DECC consider that criminal sanctions are more dissuasive than civil sanctions alone. UK legislation implementing the civil sanction regime came into force on June 29, 2013. The DECC acknowledges that it may be necessary to review the UK criminal sanctions regime to align the penalties with UK financial markets legislation for similar offences.

The DECC response is available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397367/government_response_to_consultation.pdf

and the draft legislation is available at:

http://www.legislation.gov.uk/ukdsi/2015/978011127674/pdfs/ukdsi_978011127674_en.pdf.

Proposals to Reform the UK Financial Services Trade Association Published

On January 16, 2015, a consultation paper was published setting out proposals to reform the UK financial services trade association landscape. The proposals emerge from a steering committee set up to assess the UK trade association framework. The steering committee is made up of ten retail and commercial banks in the UK — Barclays, Clydesdale Bank, HSBC, Lloyds Banking group, Nationwide Building Society, Santander UK, The Co-operative bank, The Royal Bank of Scotland, TSB Bank and Virgin Money. The key proposal is for a single trade association representing the payments, mortgage, retail, wealth, SME and commercial banking sectors to be formed to ensure more effective and efficient service to the industry. Trade associations that would contribute to this effort include the Asset Based Finance Association, Association for Financial Markets in Europe, British Bankers' Association, Council of Mortgage Lenders, Finance & Leasing Association, Intermediary Mortgage Lenders Association, Investment Management Association, Payments Council, Tax Incentivized Savings Association, TheCityUK, UK Cards Association and Wealth Management Association. Responses to the consultation are due by April 10, 2015 following which recommendations and a proposed action plan for implementing the changes will be published. A final recommendation is expected in May 2015.

The consultation paper is available at: [http://consultation-fs-](http://consultation-fs-tradeassociations.com/assets/Trade%20Associations_Consultation%20paper.pdf)

[tradeassociations.com/assets/Trade%20Associations_Consultation%20paper.pdf](http://consultation-fs-tradeassociations.com/assets/Trade%20Associations_Consultation%20paper.pdf).

Recovery & Resolution

Regulation Implementing Conditions for Contributions to the EU Single Resolution Fund Published

On January 22, 2015, the Council Implementing Regulation specifying uniform conditions for implementing the obligation of the Single Resolution Board to calculate the contributions of individual institutions to the Single Resolution Fund under the Single Resolution Mechanism was published in the Official Journal of the European Union. The Single Resolution Fund is intended to be used following exercise of resolution powers, for example as a shareholder for a "good bank" created on a good bank/bad bank split. It will be contributed to by banks potentially subject to the resolution regime. The Single Resolution Mechanism applies to banks in Eurozone and to banks in EU Member States participating in the Single Supervisory Mechanism. The Regulation will apply from January 1, 2016 or such time as the available financial means of the Single Resolution Fund, as set out under the Single Resolution Mechanism, are met.

The Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.015.01.0001.01.ENG.

ISDA Proposes CCP Recovery and Continuity Framework

On January 26, 2015, the International Swaps and Derivatives Association (“ISDA”) published a proposed recovery and continuity framework for CCPs. The framework focuses on losses caused to a CCP by the default of one of its clearing participants and not on other losses that a CCP may incur due to, for example, liquidity shortfalls or non-default losses. CCPs are already required to prepare recovery and resolution plans in many jurisdictions. The ISDA recovery and continuity framework sets out proposals for:

- (i) recovery measures that should be available to a CCP which include portfolio auction of a defaulting clearing member's portfolio as part of the default management process, limited cash calls, loss-allocation mechanisms (such as pro-rata reduction in unpaid payment obligations of the CCP) and consideration of a partial contract tear-up to assist a CCP to re-establish a matched book;
- (ii) transparency and timing requirements so that recovery measures are clearly defined in the clearing service rule book, providing clearing members with certainty about the maximum time frame for the default management process to run before it is considered to have failed as well as the applicable legal construct, source and utilization of resources;
- (iii) considerations for the use of recovery measures beyond pre-funded resources such as cash calls or loss allocation to clearing members;
- (iv) requirement for CCPs that offer several clearing services to segregate those services so that there is limited recourse between the services to limit contagion;
- (v) considerations for either partial or full contract tear-up if measures to re-establish a matched book fail;
- (vi) compensation by the CCP to clearing members for loss allocation or partial contract tear-up measures through pro-rata shares in the CCP's claims against the estate of defaulting clearing members and future CCP revenues or profits; and
- (vii) conditions for entry into resolution of a CCP.

The ISDA paper is available at: <http://www2.isda.org/functional-areas/risk-management/>.

People

Federal Reserve Bank of New York

January 21, 2015: The Federal Reserve Bank of New York announced following appointments to its Board of Directors:

- Emily K. Rafferty, president of the Metropolitan Museum of Art, has been re-appointed a Class C director.
- Paul P. Mello, president and chief executive officer of Solvay Bank, has been re-elected a Class A director representing Group 3 which consists of banks with capital and surplus of less than \$30 million.
- Terry J. Lundgren, chairman and chief executive officer of Macy's Inc., has been re-elected by the Group 3 shareholders as a Class B director representing the interests of the public.

January 26, 2015: The Federal Reserve Bank of New York announced the appointment to its Community Depository Institutions Advisory Council of Martin K. Birmingham, president and chief executive officer of Five Star Bank and Financial Services Inc. in Warsaw, New York.

US Securities and Exchange Commission

January 21, 2015: The US Securities and Exchange Commission announced that Norm Champ, Director of the Division of Investment Management, will leave later this month after five years serving in senior leadership positions.

US Consumer Financial Protection Bureau

January 23, 2015: The CFPB announced the addition of several new members to leadership positions.

- Anthony Alexis will serve as the CFPB's Assistant Director of Enforcement.

- Leandra English is returning to the CFPB to serve as the Deputy Chief Operating Officer.
- Agnes Bundy Scanlan is joining the CFPB to serve as the Northeast Regional Director of Supervision Examinations.
- Jeffrey Sumberg is joining the CFPB to serve as the Chief Human Capital Officer.

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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