



## 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 infrastructure providers, asset managers and corporates.

Our European Governance & Securities Law Focus Newsletter is available [here](#).

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## Bank Prudential Regulation & Regulatory Capital

### US Banking Regulators Request Comments on Reducing Regulatory Burden

On February 20, 2015, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency announced that they are seeking comment on banking operations regulations, capital regulations and the Community Reinvestment Act to identify “outdated or unnecessary regulations” that apply to insured depository institutions. Comments are due by May 14, 2015. Over the coming year, the regulators will publish requests for comments for nine additional categories of regulation.

The Federal Register notice is available at: <http://www.gpo.gov/fdsys/pkg/FR-2015-02-13/pdf/2015-02998.pdf>.

### European Banking Authority Opinion on Definition of Eligible Capital

On February 17, 2015, the European Banking Authority published its opinion on the appropriateness of the definition of “eligible capital” under the Capital Requirements Regulation. The term “eligible capital” has been used since January 2014, replacing the earlier “own funds” term for defining large exposures and setting large exposure limits. Under the “eligible funds” definition, the amount of Tier 2 capital recognized as eligible capital must not exceed one third of Tier 1 capital. Under the “own funds” definition, there was no limit for Tier 2 capital. The EBA opinion states that it has not found any evidence to show that the new stricter regime would impact firms detrimentally and recommends that a review of the EU large exposures regime is carried out so that it can be further aligned with the final standard of the Basel Committee on Banking Supervision that was published in April 2014.

The opinion is available at:

<http://www.eba.europa.eu/documents/10180/983359/EBA+Op+2015+01+%28Opinion+on+the+review+of+the+definition+of+eligible+capital%29.pdf>.

### Implementing Technical Standards under CRR

On February 20, 2015, amendments to the Implementing Technical Standards for the supervisory reporting of financial institutions under the CRR was published in the Official Journal of the European Union. The ITS set out the standards that financial institutions must meet for the purposes of supervisory reporting. The amendments include the replacement of several templates that are to be used by financial institutions in the supervisory reporting process. The purpose of the amendments is to increase clarity and provide further instructions and definitions to financial institutions for the purposes of supervisory reporting. The amended ITS entered into force on February 21, 2015.

The ITS are available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL\\_2015\\_048\\_R\\_0001&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_048_R_0001&from=EN).

### UK Prudential Regulation Authority Statement on Extension of Liquidity Modifications

On February 18, 2015, the Prudential Regulation Authority issued a statement on extending the duration of whole-firm liquidity modifications, intragroup liquidity modifications and permissions under the CRR. Following the European Commission's adoption of a Delegated Act on the Liquidity Coverage Requirement which will become the binding liquidity standard in the EU from October 1, 2015 (according to its provisions), a number of liquidity modifications granted by the PRA under its Prudential Sourcebook for Banks, Building Societies and Investment Firms and the CRR expire between now and October 1, 2015. Given that the time period between these expirations and the LCR becoming binding is relatively short, the PRA will allow firms to extend modification periods. The PRA statement sets out the process that is to be followed to apply for an extension.

The PRA statement is available at:

<http://www.bankofengland.co.uk/pr/ Documents/authorisations/waiverscr/errarticle8.pdf>.

## Bank Structural Reform

### UK Government Publishes Final Draft Regulations on Pension Liabilities of Ring-Fenced Bodies

On February 17, 2015, HM Treasury published the final draft Financial Services and Markets Act 2000 (Banking Reform) (Pensions) Regulations together with its response to its consultation on the draft Regulations. The aim of the Regulations is to impose requirements on the pension liabilities of ring-fenced banks to ensure they are not liable for pension schemes of other group entities (except in cases that are specifically prescribed by the Treasury). The draft Regulations provide a framework in which existing pension arrangements can be restructured so that they are aligned with the requirements. In the consultation response, HM Treasury sets out its policy decisions and addresses concerns raised by the respondents, stating that banks would now have to apply for a clearance statement from the Pension Regulator only if changes are likely to be materially detrimental to the scheme and its members. The consultation response also states there is no general provision for transitional tax protections for employees in the Regulations at present but it commits to addressing such issues once it has a better understanding of how banks will implement the ring fence and the nature of any detrimental impact on individuals as a result of scheme changes. The final draft Regulations have now been put before Parliament.

The consultation response is available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/404639/banking\\_reform\\_response\\_to\\_consultation\\_on\\_draft\\_pensions\\_regulations.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/404639/banking_reform_response_to_consultation_on_draft_pensions_regulations.pdf) and the final regulations are available at: [http://www.legislation.gov.uk/ukdsi/2015/978011127667/pdfs/ukdsi\\_978011127667\\_en.pdf](http://www.legislation.gov.uk/ukdsi/2015/978011127667/pdfs/ukdsi_978011127667_en.pdf).

## Consumer Protection

### UK Financial Conduct Authority Reports on Wholesale Sector Competition Review

On February 19, 2015, the Financial Conduct Authority published a feedback report on its wholesale sector competition review, announcing that it will be launching a wholesale market study into investment and corporate banking to assess whether there is adequate competition within this sector. The FCA wholesale sector competition review found that a lack of transparency and clarity in price and quality of services is preventing clients from being able to tell whether they are getting good value for their money. The review also found that the cross-selling and bundling of services may be making it difficult for smaller firms to compete with larger more established firms. The FCA intends to launch the market study and publish the terms of reference in the second quarter of 2015.

The FCA feedback report is available at: <http://www.fca.org.uk/static/documents/feedback-statements/fs15-02.pdf>.

## Derivatives

### European Securities and Markets Authority Consults on Transparency Requirements for Non-Equity Instruments

On February 18, 2015, the European Securities and Markets Authority published an addendum consultation paper complementing the transparency section of its previous consultation paper published in December 2014 on the implementation of the Markets in Financial Instruments Directive and Markets in Financial Instruments Regulation. The addendum seeks views on transparency requirements for non-equity instruments not covered in the previously published consultation paper, namely foreign exchange derivatives, credit derivatives, other derivatives and contracts for difference. The draft regulatory technical standards on transparency requirements of bonds, structured finance

products, emission allowances and derivatives previously referred to in the December 2014 consultation are completed in this addendum, and therefore the addendum should be read alongside the previously published consultation. MiFID II and MiFIR are applicable from January 3, 2017. The consultation closes on March 20, 2015.

The consultation paper is available at: <http://www.esma.europa.eu/content/Addendum-Consultation-Paper-MiFID-II-MiFIR>.

## Financial Services

### European Commission Consults on Capital Markets Union, Prospectus Directive and Standardized Securitization

On February 18, 2015, the European Commission published a green paper on building a Capital Markets Union. This was published alongside two complementary consultation papers on: (i) a EU framework for simple, transparent and standardized securitization; and (ii) the review of the Prospectus Directive. These publications form part of a wider initiative to develop a single market for capital across the EU. The green paper consults on the establishment of the CMU, which aims to lower the costs of funding within the EU and increase sources of funding for businesses. The paper identifies five priority areas for early action: (i) reducing barriers to accessing capital markets; (ii) widening the investor base to small and medium-sized enterprises; (iii) building sustainable securitization; (iv) boosting long-term investment; and (v) developing European private placement markets. The Prospectus Directive consultation seeks views on making it easier for companies to raise capital throughout the EU whilst effective investor protection is maintained and information to be included in prospectuses is simplified. The consultation on the EU framework for simple, transparent and standardized securitizations aims to increase high-quality securitization, through higher standards of process, legal certainty and comparability across securitization. The green paper and two consultations close for comments on May 13, 2015.

The Green paper is available at: [http://ec.europa.eu/finance/consultations/2015/capital-markets-union/docs/green-paper\\_en.pdf](http://ec.europa.eu/finance/consultations/2015/capital-markets-union/docs/green-paper_en.pdf); the Prospectus Directive consultation is available at: [http://ec.europa.eu/finance/consultations/2015/prospectus-directive/docs/consultation-document\\_en.pdf](http://ec.europa.eu/finance/consultations/2015/prospectus-directive/docs/consultation-document_en.pdf); and the consultation on the EU framework for simple, transparent and standardized securitization is available at: [http://ec.europa.eu/finance/consultations/2015/securitisation/docs/consultation-document\\_en.pdf](http://ec.europa.eu/finance/consultations/2015/securitisation/docs/consultation-document_en.pdf).

### UK Regulators Consult on Approach to Non-Executive Directors and Senior Managers

On February 23, 2015, the PRA and FCA published a joint consultation paper on: (i) the approaches to non-executive directors in banking and certain insurance firms; and (ii) the application of the presumption of responsibility to senior managers in banking firms. The consultation revises the proposed approach of the regulators to NEDs in UK banks, PRA-designated investment firms as well as certain insurance firms, such that only certain specified NEDs are subject to pre-approval and inclusion in the Senior Managers Regime. The specified NEDs would be: (i) chairman; (ii) chair of the risk committee; (iii) chair of the audit committee; (iv) chair of the remuneration committee; (v) chair of the nomination committee; and (vi) senior independent director. This narrows down the scope of the SMR, the new system that aims to better define the lines of responsibility at financial institutions so that senior individuals in banks can be held to account more easily. The paper also consults on a draft PRA supervisory statement, with the aim of clarifying the responsibilities of NEDs that are in scope of the SMR and explaining how the presumption of responsibility will be applied in cases of non-compliance with regulatory requirements. The consultation closes on April 27, 2015.

The consultation is available at: <http://www.bankofengland.co.uk/pradocuments/publications/cp/2015/cp715.pdf>.

### **UK Regulators Consult on Proposed Whistleblowing Procedures in Banking and Insurance Sectors**

On February 23, 2014, the PRA and FCA jointly proposed measures seeking to formalize procedures for whistleblowing in the banking and insurance sectors. The proposals aim to encourage employees to blow the whistle when misconduct is suspected without fear of personal repercussions. The proposed new rules include: (i) ensuring that whistleblowing procedures are in place; (ii) encouraging employers to inform employees that they are able to blow the whistle; and (iii) ensuring that whistleblowers are protected from victimization. The consultation closes on May 22, 2015.

The consultation is available at: <http://www.bankofengland.co.uk/prd/Documents/publications/cp/2015/cp615.pdf>.

## **Funds**

### **UK Financial Conduct Authority Report on Asset Management Firms and Risk of Market Abuse**

On February 18, 2015, the FCA published a report on asset management firms and the risk of market abuse. The report sets out the findings from the FCA's thematic review on how asset management firms manage the risk of insider dealing, improper disclosure, market manipulation and market abuse. The report found that firms have procedures in place to control such risks, but that further work is required to cover all material risks as comprehensive procedures were found to be in place only in a minority of firms. Only a small number of firms were found to have appropriate controls on post-trade surveillance, and further steps to manage such risks, and the risks of receiving inside information during the investment process, are recommended.

The report is available at: <http://www.fca.org.uk/static/documents/thematic-reviews/tr15-01.pdf>.

## **Recovery & Resolution**

### **Federal Deposit Insurance Corporation Extends Deadline for “Living Wills” for Nonbank Systemically Important Financial Institutions**

On February 18, 2015, the Federal Deposit Insurance Corporation extended the submission deadline for resolution plans for three non-bank financial companies including American International Group, Inc., General Electric Capital Corporation, Inc., and Prudential Financial, Inc. Originally due July 1, 2015, the “living wills” are now due on December 31, 2015. The Dodd-Frank Wall Street Reform and Consumer Protection Act requires non-bank financial companies designated by the Financial Stability Oversight Council for supervision by the Federal Reserve Board to submit plans describing their resolution strategy in the case of material distress. The extension is consistent with extensions to other firms and will give the companies additional time to prepare their resolution plans.

The FDIC press release is available at: <https://www.fdic.gov/news/news/press/2015/pr15017.html>.

## **People**

### **US Commodity Futures Trading Commission Announces Members of the Market Risk Advisory Committee**

On February 18, 2015, the US Commodity Futures Trading Commission announced the members of the CFTC's Market Risk Advisory Committee. MRAC, first chartered in 2014, is intended to support the CFTC's efforts to identify and mitigate risks within the market to industry participants, consumers and the broader financial community.

The full list of MRAC members is available at:

[http://www.cftc.gov/About/CFTCCommittees/MarketRiskAdvisoryCommittee/mrac\\_members](http://www.cftc.gov/About/CFTCCommittees/MarketRiskAdvisoryCommittee/mrac_members).

### **Chief Risk Officer for the Federal Reserve Bank of New York to Retire**

On February 18, 2015, Sandra C. Krieger, executive vice president of the Risk Group and chief risk officer of the Federal Reserve Bank of New York, announced her intention to retire from the bank in the second quarter of 2015.

The notice is available at: <http://www.newyorkfed.org/newsevents/news/aboutthefed/2015/oa150218.html>.

### **European Central Bank Appointment**

Luc Coene, currently Governor of the Nationale Bank van België, has been appointed as one of four European Central Bank representatives to the Supervisory Board of the Single Supervisory Mechanism. The other ECB representatives are Sirkka Hämäläinen, Julie Dickson and Ignazio Angeloni.

### **Events**

February 26, 2015: Public meeting of the Energy and Environmental Markets Advisory Committee on the CFTC's proposed rules seeking to implement position limits and how these proposals will impact energy and environmental markets.

February 27, 2015: EBA open hearing on draft ITS on procedures, forms and templates for resolution planning.

March 5, 2015: CFTC public roundtable on issues related to recovery and orderly wind-down of Derivatives Clearing Organizations.

March 6, 2015: FCA and Payment Services Regulator Competition Concurrency Consultation Breakfast Forum.

March 16, 2015: FCA briefing on the EU Market Abuse Regulation (first in a series).

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. If you wish to receive more information on the topics covered in this publication, you may contact your usual Shearman & Sterling representative or any of the following:

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