

## 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 Federal Deposit Insurance Corporation Issues Notice of Proposed Rulemaking to Revise How Small Banks are Assessed for Deposit Insurance

On June 16, 2015, the US Federal Deposit Insurance Corporation approved a Notice of Proposed Rulemaking and request for comment on proposed refinements to the deposit insurance assessment system for small insured depository institutions that have been federally insured for at least five years (referred to as “established small banks”). The FDIC is proposing to refine the deposit insurance assessment system by: (i) revising the financial ratios method so that it would be based on a statistical model estimating the probability of failure over three years; (ii) updating the financial measures used in the financial ratios method consistent with the statistical model; and (iii) eliminating risk categories for established small banks and using the financial ratios method to determine assessment rates for all such banks (subject to minimum or maximum initial assessment rates based upon a bank’s composite rating). The FDIC proposes that the refinements would become operative the quarter after the reserve ratio of the Deposit Insurance Fund reaches 1.15 percent, and that a final rule would go into effect the quarter after a final rule is adopted; however, as stated above, the proposed amendments would not become operative until the quarter after the DIF reserve ratio reaches 1.15 percent.

The FDIC press release is available at: <https://www.fdic.gov/news/news/press/2015/pr15050.html> and the Noticed of Proposed Rulemaking is available at: <http://www.gpo.gov/fdsys/pkg/FR-2015-07-13/pdf/2015-16514.pdf>.

### UK Prudential Regulation Authority Consults on Implementation of UK Leverage Ratio Framework

On July 10, 2015, the Prudential Regulation Authority published proposed rules on the implementation of the UK leverage ratio framework. The Financial Policy Committee directed the PRA on July 1, 2015, to implement a UK leverage ratio framework applying: (i) a minimum leverage requirement immediately to UK Global Systemically Important Institutions, and from 2018 (subject to a review in 2017) to all banks, building societies and PRA-regulated investment firms; (ii) a supplementary leverage ratio buffer of 35 percent, of corresponding risk weighted systemic buffer rates to UK G SIIIs, phased in from 2016, and to domestically systemically important banks, building societies and PRA regulated investment firms from 2019, referred to as the additional leverage ratio buffer or ALRB; and (iii) a countercyclical leverage ratio buffer of 35 percent, of a firm’s institution-specific countercyclical capital buffer rate which will apply immediately to UK G SIIIs and other major domestic UK banks and building societies and from 2018 (subject to a review in 2017) to all banks, building societies and PRA regulated investment firms, including any ring fenced banks, large building societies and any other banks that become subject to a countercyclical capital buffer. The PRA proposes that firms covered by the rules should include those with total retail deposits equal to or greater than £50 billion, whether on a consolidated or individual basis, on a firm’s financial year-end date. The PRA is also proposing that relevant firms will be subject to leverage ratio reporting and disclosure requirements. The PRA’s consultation sets out how it intends to implement that framework and includes proposed rules, templates for reporting, a supervisory statement on which firms would be expected to report leverage ratio information and a supervisory statement on the PRA’s expectations on the application of the UK leverage ratio framework.

Responses to the consultation must be submitted by October 12, 2015. The PRA intends to publish its policy statement with feedback, final rules and supervisory statements by the end of 2015. It is proposed that the UK leverage ratio framework will come into force on January 1, 2016.

The PRA’s consultation paper is available at:

<http://www.bankofengland.co.uk/pr/Document/publications/cp/2015/cp2415.pdf>.

## Corporate Governance

### UK Regulators Publish Further Final Rules on Senior Manager and Certification Regime

On July 7, 2015, the PRA and Financial Conduct Authority published further Policy Statements, including feedback to proposals and final rules for the Senior Manager and Certification Regime which comes into effect next year. The PRA and FCA have now issued final rules on all aspects of the regime except for: (i) rules on regulatory references (the PRA will consider the recommendations made by the Fair and Effective Markets Review before making final rules before March next year); (ii) rules applicable to UK branches of non-EEA firms; and (iii) rules applicable to UK branches of EEA firms for which final legislation is required before the rules can be made. The FCA is also consulting on the extension of the certification regime to individuals involved in wholesale activity, responses to which are due by September 6, 2015. The regulators also intend to provide final guidelines on enforcement matters and senior management responsibility regarding whistleblowing. The Senior Manager and Certification Regime is due to come into effect from March 7, 2016.

The PRA's Policy Statement is available at:

<http://www.bankofengland.co.uk/pr/Documents/publications/ps/2015/ps1615.pdf> and the FCA's Final Rules and Consultation Paper is available at: <http://www.fca.org.uk/static/documents/consultation-papers/cp15-22.pdf>. The PRA simultaneously published a Supervisory Statement, available at: <http://www.bankofengland.co.uk/pr/Documents/publications/ss/2015/ss2815.pdf> and a Statement of Policy, available at: <http://www.bankofengland.co.uk/pr/Documents/publications/sop/2015/conditions.pdf>.

### Basel Committee on Banking Supervision Publishes Revised International Guidelines on Corporate Governance Principles for Banks

On July 8, 2015, the Basel Committee on Banking Supervision published final updated Guidelines on Corporate Governance Principles for Banks. The Guidelines replace the guidance published by the Basel Committee in 2010 which had been produced as a result of the lessons learnt since the recent financial crisis. The revised guidance has been issued because the thematic review on risk governance that the Financial Stability Board undertook in 2013 showed that banks still need to improve risk governance frameworks, including enhancing the authority and independence of chief risk officers, and that national regulators need to improve their ability to assess the effectiveness of a bank's risk governance and engage more frequently with the bank's board and risk and audit committees.

The revised Guidelines are available at: <http://www.bis.org/bcbs/publ/d328.pdf>.

## Credit Ratings

### European Securities and Markets Authority Registers New Credit Rating Agency

On July 10, 2015, the European Securities and Markets Authority approved the registration of modeFinance S.r.l., as a credit rating agency under the Credit Rating Agencies Regulation. ModeFinance is based in Italy, and its credit ratings may now be used for regulatory purposes within the European Union.

The ESMA press release is available at:

<http://www.esma.europa.eu/news/ESMA-registers-modeFinance-credit-rating-agency?t=326&o=home>.

## Cyber Security

### US Federal Financial Institutions Examination Council Develops Cybersecurity Assessment Tool for Chief Executive Officers and Boards of Directors

On June 30, 2015, the Federal Financial Institutions Examination Council – an interagency body composed of the US Board of Governors of the Federal Reserve System, the FDIC, the US National Credit Union Administration, the US Office of the Comptroller of the Currency, and the US Consumer Financial Protection Bureau – announced its release of a Cybersecurity Assessment Tool. The tool, together with other resources made available by the FFIEC to financial institutions, is available for all financial institutions regardless of asset size and is intended to aid senior management and boards of directors of financial institutions to assess cybersecurity risk and preparedness.

The Federal Reserve Board press release is available at:

<http://www.federalreserve.gov/bankinforeg/srletters/sr1509.htm> and the cybersecurity assessment tool is available at: <http://www.ffiec.gov/cyberassessmenttool.htm>.

## Financial Market Infrastructure

### Financial Stability Board Progress in Reforming Major Interest Rate Benchmarks

On July 9, 2015, the Financial Stability Board published an interim progress report on reforms to existing interest rate benchmarks and on the construction and implementation of alternative near risk-free interest rate benchmarks. This follows the FSB's recommendations for reforms in this area, published in July 2014. The report examines the progress made towards achieving those recommendations. The FSB's recommendations in the July 2014 report called for a strengthening in existing interest rate benchmarks, such as LIBOR, EURIBOR and TIBOR, collectively coined "IBORs," and other reference rates based on unsecured bank funding costs by underpinning them to the greatest extent possible with transaction data. In addition, the FSB proposed steps to develop alternative near risk-free interest rate benchmarks, given that there are certain financial transactions, including many derivatives transactions, that it considers better suited to such reference rates.

Since July 2014, the administrators of the most widely used IBORs have taken steps to accommodate the FSB's recommendations. Such steps included reviews of respective benchmark methodologies and definitions, data collection exercises and feasibility studies, consideration of transitional and legal issues, and broad consultations with submitting banks, users and other stakeholders. Also, detailed data collection exercises have been implemented in key markets, and work is now ongoing to identify potential alternative near risk-free interest rate benchmarks, where these do not currently exist. The FSB will continue to monitor progress in implementing the FSB's recommendations in the year ahead and will prepare an updated progress report for publication by the FSB in July 2016.

The interim progress report is available at:

<http://www.financialstabilityboard.org/wp-content/uploads/OSSG-interest-rate-benchmarks-progress-report-July-2015.pdf>.

### Assessment of Implementation of Principles for Financial Market Infrastructures Announced

On July 9, 2015, the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions announced that they had begun the first Level 3 assessment of the implementation of the Principles for Financial Market Infrastructures. The review aims to assess the consistency of outcomes achieved through implementation of the PFMIs and will focus on requirements for financial risk management by CCPs by considering the outcomes achieved by a number of globally and locally active CCPs clearing exchange-traded and OTC derivatives. The results of the assessment are intended to be published in 2016.

The announcement is available at: <https://www.iosco.org/news/pdf/IOSCONEWS388.pdf>.

### US Regulators Release Joint Staff Report Regarding the US Treasury Market

On July 13, 2015, the US Department of Treasury, the Federal Reserve Board, the Federal Reserve Bank of New York, the US Securities and Exchange Commission and the US Commodity Futures Trading Commission issued a joint report analyzing the significant volatility in the US Treasury market on October 15, 2014. The joint report provides insight and detailed analysis of the market conditions and offers a number of developments which may help explain the conditions that likely contributed to the volatility. Specifically, the report finds that among other things, changes in global risk sentiment and investor positions, a decline in order book depth and changes in order flow and liquidity provision together provide important insight into the developments of that day. The report also highlights the changing structure of the US Treasury market and proposes next steps to further enhance the public and private sectors' understanding of changes to the structure of the US Treasury market and their implications. The report recommends continued analysis of US Treasury market structure and functioning, focusing on trading and risk management practices, the availability of public data and continued efforts to strengthen monitoring and inter-agency coordination related to trading across the US Treasury cash and futures markets.

The joint report is available at:

<http://www.sec.gov/reportspubs/special-studies/treasury-market-volatility-10-14-2014-joint-report.pdf>.

## Financial Services

### European Banking Authority Opinion on Securitization

On July 7, 2015, the European Banking Authority published an Opinion on the establishment of a European framework for qualifying securitizations. The Opinion is addressed to the European Commission, which issued a call for advice in January 2014 to identify the most appropriate characteristics in relation to categories of underlying assets and certain structural and transparency features for "high-quality" transactions. The EBA was asked to assess whether it would be appropriate to grant preferential treatment to high-quality securitizations, so as to boost EU securitization markets. The Opinion makes five recommendations, namely to: (i) conduct an all-inclusive review of the regulatory framework for securitizations and other investment products such as covered bonds and whole loan portfolios; (ii) create a framework for qualifying securitizations; (iii) establish criteria defining qualifying term securitizations; (iv) establish criteria defining qualifying asset-backed commercial paper securitizations; and (v) re-calibrate the Basel Committee on Banking Supervision 2014 securitization framework applicable to qualifying securitization positions. The Opinion states that these recommendations on the implementation of a qualifying securitization framework should be reconsidered subject to any progress made by the Basel Committee on Banking Supervision and International Organization of Securities Commission on the definition of a simple transparent and comparable securitizations framework. An accompanying report on qualifying securitization was also published by the EBA and describes the analysis carried out in order to reach the recommendations.

The Opinion is available at: <https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-14+Opinion+on+qualifying+securitisation.pdf>.

### UK Government Makes Recommendations to the Financial Policy Committee

On July 8, 2015, George Osborne, Chancellor of the Exchequer, wrote to Mark Carney, Governor of the Bank of England, specifying the remit and recommendations for the FPC in the coming year. Once a year, the Chancellor is required to set out the economic policy of the Government and make recommendations to the FPC about matters that the FPC should consider as relevant to BoE's financial stability objective and the FPC's responsibility for achieving that objective. In the

letter, the FPC is requested to consider a broad range of risks to the UK financial system, including identifying, monitoring and addressing systemic non-financial risks such as cyber risks. The Chancellor's recommendations included that the FPC: (i) should support the Government's strategy for making the UK's financial services sector the best regulated and most competitive in the world, including taking into account the promotion of competition and innovation in all sectors of the industry and retaining the UK's position as a leading international financial center; (ii) should consider whether there is a risk of public funds being required and should seek to minimize such risks; and (iii) should note in its public documents how it has had regard to the policy settings and forecasts of the Monetary Policy Committee.

The letter is available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/442888/FPC\\_remit\\_letter\\_summer\\_budget\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/442888/FPC_remit_letter_summer_budget_2015.pdf).

### Board of the International Organization of Securities Publishes Report Titled *SME Financing Through Capital Markets*

On July 9, 2015, the Board of IOSCO published a report titled *SME Financing through Capital Markets*, which provides recommendations for regulators to facilitate capital-raising by Small and Medium Enterprises in emerging markets. The report recognizes the obstacles facing SMEs in accessing market-based financing, and examines some of the successful measures applied by regulators to aid SMEs in accessing capital markets. Successful regulatory frameworks and measures include establishing separate equity and fixed income markets with regulatory requirements tailored to SMEs, establishing market advisor and market-making systems and introducing alternative methods of financing such as private equity, venture capital and securitization. The IOSCO Board will have a roundtable on the issue of SME access to market-based finance at its next meeting in Toronto in October 2015.

The report is available at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD493.pdf>.

## Recovery & Resolution

### European Banking Authority Guidelines and Standards on Simplified Obligations

On July 7, 2015, the EBA published a final report, including final guidelines and final draft Implementing Technical Standards on the eligibility of institutions for simplified obligations in the context of recovery planning, resolution planning and resolvability assessments under the Bank Recovery and Resolution Directive. The EBA also published final draft ITS on the procedures, forms and templates for submitting information on resolution plans. The BRRD allows national regulators to apply simplified recovery obligations, including simpler requirements as to the contents and details of resolution plans, and less frequency in their updates. Such obligations will not apply to globally systemically important institutions and other systemically important institutions. The EBA's final guidelines set out: (i) criteria for considering whether a firm can be subject to simplified obligations; (ii) entitlement for national regulators to attribute certain weightings to such criteria; and (iii) creation of 'mandatory indicators' which must be used and 'optional indicators' which may be used, in assessing application criteria. The technical standards specify general reporting procedures, including further instructions for completing the reporting form. National regulators retain the power to select which form a particular firm is required to complete. Authorities are to report within two months of publication of the translated versions of the guidelines on the EBA website how they assessed the application of the criteria and indicators to their institutions. The EBA will then assess any difference in the modes of assessment by the jurisdiction, and will submit a report of its findings to the European Parliament, Council and European Commission by December 31, 2017.

The final report, guidelines and draft ITS are available at: <https://www.eba.europa.eu/-/eba-publishes-technical-standards-and-guidelines-on-simplified-obligations>.

### European Banking Authority Guidelines on Conditions for Group Financial Support

On July 9, 2015, the EBA published final guidelines on conditions for group financial support under the BRRD, together with final draft Regulatory Technical Standards, specifying the conditions for group financial support and final draft RTS on the form and content of disclosure of financial support agreements. The EBA's guidelines enhance the means through which one member of a banking group may provide support to another member of the same group, which is in financial difficulty. This overcomes the current lack of a comprehensive group support mechanism across the EU, ensuring that such support may be enforced between cross-border institutions forming part of the same banking group. The RTS outline the factors to be considered when ascertaining whether the conditions for the provision of group financial support are satisfied. National regulators are also required to consider the possible reasons for the financial distress of the relevant entity (e.g., whether this is due to its business model, the current market situation or other circumstances). The guidelines and RTS also confirm that group support may be enforced in certain instances, even where prudential requirements have not been met.

The final guidelines and draft RTS are available at: <http://www.eba.europa.eu/-/eba-streamlines-intra-group-financial-support-for-banking-institutions>.

### People

#### UK Financial Conduct Authority Appoints New Director of Supervision, Retail and Authorizations

On July 7, 2015, the FCA announced that it has appointed Jonathan Davidson as its new Director of Supervision for retail and authorizations beginning in the third quarter of 2015.

### Upcoming Events

July 16 and 29, 2015: SEC outreach programs to aid firms in compliance with Regulation Systems Compliance and Integrity.

July 21, 2015: FCA briefing on implementation and new clearing and margin obligations under EMIR.

July 20, 2015: FCA Senior Managers and Certification Regime briefing for professional advisers.

July 22, 2015: FCA Annual Public Meeting 2015.

August 3, 2015: FCA Call for Input event on regulatory barriers to innovation in digital and mobile solutions: payment services and systems, banks and credit unions, AML and KYC.

August 11, 2015: FCA Call for Input event on regulatory barriers to innovation in digital and mobile solutions - retail investment advice and asset management, mobile network providers and technology devices industry, insurance brokers and providers.

August 20, 2015: EBA Public Hearing on guidelines on the prudential assessment of acquisitions of qualifying holdings in the financial sector.

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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