

FINANCIAL REGULATORY DEVELOPMENTS FOCUS

In this week's newsletter, we provide a snapshot of the principal U.S., European and global financial regulatory developments of interest to banks, investment firms, broker-dealers, market infrastructure providers, asset managers and corporates.

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Bank Prudential Regulation & Regulatory Capital

US Federal Reserve Board Issues Interim Final Rule Expanding the Applicability of the Small Bank Holding Company Policy Statement

On August 28, 2018, the U.S. Board of Governors of the Federal Reserve System issued an interim final rule increasing the asset threshold for the applicability of the Federal Reserve Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (Regulation Y, Appendix C) from \$1 billion to \$3 billion in total consolidated assets. The interim final rule implements Section 207 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which mandated that the Federal Reserve Board increase the threshold. The policy statement permits the formation and expansion of small bank holding companies with debt levels that are higher than typically permitted for larger bank holding companies, given that smaller institutions often have limited access to equity financing. The current policy statement applies to bank holding companies with less than \$1 billion in pro forma total consolidated assets that: are not engaged in significant non-banking activities either directly or through a non-bank subsidiary; do not conduct significant off-balance sheet activities either directly or through a non-bank subsidiary; and do not have a material amount of debt or equity securities outstanding that are registered with the U.S. Securities and Exchange Commission. The interim final rule also makes conforming changes to Regulation Q (Capital Adequacy of Bank Holding Companies, Savings and Loan Holding Companies, and State Member Banks) and Regulation Y (Bank Holding Companies and Change in Bank Control). The interim final rule will take effect upon its publication in the Federal Register, with comments due within 60 days of publication.

The full text of the interim final rule is available at:

<https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180828a1.pdf>.

US Office of the Comptroller of the Currency Publishes Advanced Notice of Proposed Rulemaking with Respect to Community Reinvestment Act Modernization

On August 28, 2018, the U.S. Office of the Comptroller of the Currency issued an advanced notice of proposed rulemaking with respect to the modernization of the Community Reinvestment Act. The notice highlights that a revised CRA framework will allow financial institutions to more effectively serve the needs of the communities in which they operate by focusing CRA activities to where they are needed most, providing greater clarity with respect to CRA-qualifying activities and evaluating CRA activities more consistently. With respect to the latter, the notice provides that a modernized CRA framework will allow for more timely evaluation of the CRA activities of financial institutions, result in greater transparency and consistent interpretation of the CRA and reduce the regulatory burden of financial institutions. The specific requests for comment are organized into two subcategories—evaluation of the existing CRA framework and the modernized CRA framework. With respect to the existing CRA framework, the notice requests comments regarding whether the current framework is easy to understand, consistently applied and transparent; whether the current framework supports the goals of the CRA; and which aspects of the current framework are successful or should be retained. With respect to the modernized CRA framework, the notice requests comments regarding the revision of the current performance evaluation method, including whether revised CRA performance evaluations should be metric-based; re-defining of communities and assessment areas to reflect activities that occur outside of an institution's physical location and to account for institutions with no physical locations or those with activities that extend significantly beyond the institutions' physical locations; expanding and providing greater clarity with respect to the types and categories of activities that should receive CRA consideration; and facilitating transparency and consistency in recordkeeping, reporting and examination requirements. Comments are due no later than 75 days after the proposal's publication in the Federal Register.

The full text of the notice is available at: <https://www.occ.treas.gov/news-issuances/news-releases/2018/nr-occ-2018-87a.pdf>.

European Banking Authority Proposes Revised Supervisory Reporting Technical Standards on Liquidity Coverage Requirement

On August 28, 2018, the European Banking Authority launched a consultation on proposed revisions to the Implementing Technical Standards that relate to supervisory reporting, under the common reporting, or COREP, framework, in line with the Liquidity Coverage Requirement, or LCR, under the Capital Requirements Regulation.

The proposed revisions to the ITS are intended to reflect amendments made to an existing Delegated Regulation supplementing the Capital Requirements Regulation. These amendments were made by an Amending Regulation adopted by the European Commission in July 2018. The changes introduced by the Amending Regulation require the EBA to make related changes to the ITS on LCR reporting to capture the necessary elements for its calculation and monitoring. The revisions to the ITS relate mainly to the calculation of inflows and outflows in securities financing transactions and collateral swaps or the unwind waivers envisaged for some SFTs and collateral swaps with central banks. Further minor amendments are also proposed.

Comments on the consultation are invited by October 26, 2018, using the “send your comments” button on the consultation webpage. The EBA will also hold a public hearing on the consultation proposals at its premises on October 10, 2018 from 11:00 to 12:30 U.K. time.

The Amending Regulation adopted in July 2018 is in the process of being considered by the European Parliament and the Council of the European Union. The EBA intends to submit the final draft revised ITS once the three-month non-objection period to the Amending Regulation has passed. The first reference date under the revised ITS is expected to be the first end-month date after the application of the Amending Regulation.

The consultation paper is available at:

<http://www.eba.europa.eu/documents/10180/2321510/Consultation+paper+on+LCR+Reporting+%28EBA-CP-2018-12%29.pdf>, the consultation webpage is available at: <http://www.eba.europa.eu/regulation-and-policy/supervisory-reporting/its-on-supervisory-reporting-amendments-with-regards-to-corep-lcr> and details of the Amending Regulation are available at: <https://finreg.shearman.com/eu-secondary-legislation-adopted-amending-liquidi>.

European Banking Authority Proposes Revised Implementing Technical Standards for Supervisory Reporting Under the Capital Requirements Regulation

On August 28, 2018, the European Banking Authority launched a consultation on proposed revisions to the existing Implementing Technical Standards for the financial reporting, or FINREP, framework under the Capital Requirements Regulation.

The proposed revisions relate to the reporting requirements for non-performing and forborne exposures. The EBA proposes revisions to existing templates to provide for additional breakdowns on performing and non-performing exposures, forborne exposures and collateral obtained. The proposals include some new templates for additional reporting by institutions with elevated levels of non-performing exposures that are not “small and non-complex.” The new templates are designed to provide further insights into an institution’s portfolios of performing and non-performing loans and/or forborne loans and advances and on collateral obtained. The EBA also proposes revisions to the reporting on profit or loss items in FINREP and to account

for the introduction of International Financial Reporting Standard 16 Leases, which is due to replace IAS 17 as the standard for the accounting of leases from January 1, 2019.

Responses to the consultation are invited by November 27, 2018, using the “send your comments” button on the consultation webpage. The EBA also intends to hold a public hearing on the consultation proposals at its premises on October 3, 2018 from 10:00 to 11:30 U.K. time. The EBA expects to submit final draft revised ITS to the European Commission in April or May 2019. The first reference date for reporting in line with the revised ITS is expected to be March 31, 2020, with an implementation period of approximately one year.

The consultation paper is available at:

<http://www.eba.europa.eu/documents/10180/2321183/Consultation+paper+on+FINREP+amendments+%28EBA-CP-2018-13%29.pdf> and the consultation webpage is available at: <http://www.eba.europa.eu/regulation-and-policy/supervisory-reporting/its-on-supervisory-reporting-amendments-with-regards-to-finrep>.

Basel Committee Finalizes Technical Amendment to Pillar 3 Disclosure Requirements

On August 30, 2018, following a consultation in March 2018, the Basel Committee on Banking Supervision published a finalized technical amendment to the consolidated Pillar 3 disclosure technical standard that was issued in March 2017. The amendment imposes additional Pillar 3 disclosure requirements for those jurisdictions implementing an Expected Credit Loss, or ECL, accounting model as well as for those adopting transitional arrangements for the regulatory treatment of accounting provisions. These additional disclosures require banks to disclose, where applicable: (i) the “fully loaded” impact of ECL transitional arrangements used in Total Loss Absorbing Capacity resources and ratios; (ii) the allocation between general and specific provisions for standardized approach exposures; and (iii) the rationale for their categorization of ECL accounting provisions in general and specific categories for standardized approach exposures.

The technical amendment will also apply to jurisdictions adopting transitional arrangements for the regulatory treatment of accounting provisions. The interim approach to, and transitional arrangements for, the regulatory treatment of accounting provisions were published separately by the Basel Committee in March 2017.

The amendments covered by the revised Technical Standard will take effect from January 1, 2019.

The Technical Amendment is available at: <https://www.bis.org/bcbs/publ/d446.pdf>, the consultation paper is available at: <https://www.bis.org/bcbs/publ/d435.pdf> and the interim approach and transitional arrangements published March 2017 are available at: <https://www.bis.org/bcbs/publ/d401.pdf>.

Credit Ratings

US Office of the Comptroller of the Currency Issues Guidance with Respect to Implied Sovereign Support

On August 28, 2018, the U.S. Office of the Comptroller of the Currency issued guidance to OCC-supervised institutions with respect to the role of informal or implied expressions of support from foreign governments in determining credit risk ratings. The OCC guidance builds upon Appendix E of the Rating Credit Risk booklet of the Comptroller’s Handbook, which discusses informal or implied sovereign guarantees, and provides a list of factors for examiners to consider when evaluating this type of support. The guidance notes a number of factors that should be considered when evaluating informal or implied sovereign guarantees, including the strength of the sovereign; whether any liquidity or legal constraints exist that may affect the availability of support by the sovereign; and the likelihood of a counterparty receiving support from a sovereign. With respect to the latter, the OCC notes that evaluation of this factor includes analysis regarding any legal and financial obligations of the sovereign, the ownership or control of the counterparty and the sovereign’s

willingness to support the counterparty. The guidance notes that analysis of informal or implied sovereign guarantees should reference and consider any precedent examples where the sovereign provided support to the counterparty, the effect that any support could have on the sovereign's own creditworthiness and how other factors (e.g., political or economic changes or new legislation) may affect the sovereign's willingness to support the counterparty. The guidance provides that while informal or implied sovereign guarantees may result in changes to a counterparty's regulatory risk rating, the analysis and determination should be predicated on policies and procedures that provide appropriately documented criteria and methods to determine how and under what circumstances informal or implied sovereign guarantees may affect risk ratings.

The full text of the OCC guidance is available at: <https://www.occ.treas.gov/news-issuances/bulletins/2018/bulletin-2018-25.html>.

Recovery & Resolution

UK Regulator Confirms its Expectations on Reporting for Resolution Planning

On August 31, 2018, the Prudential Regulation Authority issued an update on the application of its supervisory statement, "Resolution Planning." The supervisory statement sets out the PRA's expectations on the resolution planning information that firms must submit to comply with their obligations under the EU Bank Recovery and Resolution Directive. The update confirms the approach that will be taken by the PRA and the Bank of England as the U.K.'s national resolution authority.

Following a consultation launched in October 2017, in April 2018, the European Banking Authority submitted final draft revised Implementing Technical Standards under the BRRD to the European Commission. The revised ITS set out procedures and a minimum set of standard templates for use by institutions when providing resolution planning information to resolution authorities. The ITS stipulate that the new framework will take effect in 2019 when resolution authorities collect information as of December 31, 2018. Firms are expected to start reporting using the new templates by the end of May 2019 at the latest and should submit templates on an annual basis in accordance with the ITS. However, the update confirms that the PRA has decided to delay resolution pack phase 1 submissions until 2020 (or later as required by firms' supervisors) while it assesses the impact of the ITS on the expectations in its supervisory statement.

The BoE, as the U.K.'s national resolution authority for the purposes of the BRRD, is permitted to set alternative requirements for firms that are subject to "Simplified Obligations" as defined in Regulatory Technical Standards that are expected to come into force later in 2018. The update confirms that the BoE anticipates that all U.K.-headquartered firms and all subsidiaries of third-country groups that have been notified that their preferred resolution strategy does not involve the use of stabilisation powers will be subject to Simplified Obligations. Such firms will not need to submit information using the templates in the ITS unless the Bank informs them otherwise. Instead, firms subject to Simplified Obligations should submit Phase 1 resolution planning data in accordance with the PRA's supervisory statement.

The update confirms that firms should expect to be contacted by their supervisory contact by September 6, 2018 if they are affected.

The update is available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2013/resolution-planning-ss>, the current version of Supervisory Statement, "Resolution Planning" (SS19/13) is available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2015/ss1913-update.pdf>, details of the final draft revised ITS are available at: <https://finreg.shearman.com/european-authority-proposes-revised-techn> and details of the final draft RTS

on Simplified Obligations are available at: <https://finreg.shearman.com/european-banking-authority-publishes-regulatory-t>.

US Federal Reserve Board and FDIC Extend Resolution Plan Submission Deadlines for Certain Institutions

On August 30, 2018, the U.S. Board of Governors of the Federal Reserve System and U.S. Federal Deposit Insurance Corporation announced that the agencies have extended the submission deadline for the resolution plans (commonly referred to as “living wills”) for one designated non-bank and four foreign banking organizations. The announcement extends the submission deadline for the non-bank financial company from December 31, 2018 to December 31, 2019, and extends the submission deadline for the four foreign banking organizations from July 1, 2019 to July 1, 2020. The agencies noted that the extended deadline will allow for feedback to be provided to the institutions with respect to their prior resolution plan submissions, and will also provide time for the institutions to prepare their next resolution plan submissions. The FDIC also announced that it will be extending the resolution plan submission deadline for all insured depository institutions to no sooner than July 1, 2020.

The full text of the FDIC and Federal Reserve press release is available at: <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20180830a.htm>.

Securities

European Banking Authority Proposes Revised Implementing Technical Standards for Reporting of Securitization Information

On August 28, 2018, the European Banking Authority published a consultation paper setting out proposed amendments to existing Implementing Technical Standards on supervisory reporting, to align the reporting of securitizations with the new EU securitization framework. The new securitization framework took effect in January 2018 and comprises: (i) the Securitization Regulation (also known as the STS Regulation), which lays down common due diligence for institutional investors, risk retention and transparency measures and establishes a category of simple, transparent and standardized securitization in the EU; and (ii) a Regulation making targeted amendments to the Capital Requirements Regulation to provide for the capital treatment of STS securitizations and certain SME synthetic securitizations, including measures to reduce reliance on external credit ratings.

The EBA is proposing amendments to the ITS to accommodate the new securitization framework and to make related amendments to reporting templates to reflect the transitional provisions for outstanding securitization positions.

Responses to the consultation are invited by November 27, 2018, using the “send your comments” button on the consultation webpage. The EBA expects to submit the final draft of the revised ITS to the Commission in April or May 2019. The implementation date for the revised ITS is intended to be aligned with the end of the transition period of the new securitization framework. The first reference date for reporting in line with the revised ITS is expected to be March 31, 2020, with an implementation period of approximately one year.

The consultation paper is available at: <https://www.eba.europa.eu/documents/10180/2321374/Consultation+paper+on+COREP+Securitisations+%28EBA-CP-2018-14%29.pdf> and the consultation webpage is available at: <http://www.eba.europa.eu/regulation-and-policy/supervisory-reporting/its-on-supervisory-reporting-amendments-with-regards-to-corep-securitisation>.

Upcoming Events

September 7, 2018: U.S. House Financial Services Committee hearing: “The Future of Money: Coins and Banknotes”

September 11, 2018: FCA annual public meeting at which the FCA’s 2017/2018 Annual Report will be discussed

September 27–28, 2018: Annual ESRB conference

October 3, 2018: Public hearing on the EBA’s consultation on revised ITS for supervisory reporting under the Capital Requirements Regulation

October 10, 2018: Public hearing on the EBA’s consultation on revised ITS on supervisory reporting in line with the Liquidity Coverage Requirement under the Capital Requirements Regulation

October 15, 2018: SRB Conference 2018 - 10 years after the crisis: are banks now resolvable?

November 28, 2018: EBA 7th Annual Research Workshop - Reaping the benefits of an integrated EU banking market

Upcoming Consultation Deadlines

September 7, 2018: FMSB consultation on a draft statement of good practice on algorithmic trading

September 7, 2018: ESMA consultation on amendments to the MiFID II tick size regime

September 7, 2018: FSB, IOSCO, Basel Committee and CPMI consultation on incentives to centrally clear OTC derivatives

September 17, 2018: U.K. BEIS consultation on a draft Bill introducing a register of the beneficial owners for overseas legal entities that own U.K. property

September 19, 2018: EBA consultation on draft RTS for calculation of KIRB for securitized exposures

September 21, 2018: FCA interim report (MS 17/1.2) on its investment platform market study

September 21, 2018: FSB consultation on implementation of the LEI

September 24, 2018: EBA consultation on draft Guidelines on outsourcing arrangements

September 25, 2018: PRA consultation on reflecting the Systemic Risk Buffer framework within the Leverage Ratio framework for U.K. systemic ring-fenced bodies

September 26, 2018: ESMA consultation on revised Guidelines for periodic reporting by credit rating agencies

September 27, 2018: CPMI and IOSCO consultation on governance arrangements for OTC derivatives data elements

September 28, 2018: FCA call for input on the PRIIPs Regulation

September 30, 2018: BoE consultation on term SONIA reference rates

October 1, 2018: Comment deadline for interim final rule regarding the treatment of certain municipal obligations as high-quality liquid assets under the liquidity coverage ratio rule

October 5, 2018: ESMA consultation on minimum information content of exempted documents under the Prospectus Regulation

October 5, 2018: ESMA consultation on draft guidelines on risk factors under the Prospectus Regulation

October 5, 2018: BoE/PRA/FCA Discussion Paper on operational resilience of firms and FMIs

October 5, 2018: FCA consultation on a new workers directory

October 5, 2018: Law Commission consultation on reform of the anti-money laundering regime for England and Wales

October 12, 2018: ISDA consultation on fall backs based on overnight risk-free rates for certain derivatives

October 14, 2018: Regulators (globally) consultation on a Global Financial Innovation Network

October 17, 2018: Comment deadline for Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds (proposed changes to the Volcker Rule)

October 26, 2018: EBA consultation on revised ITS on supervisory reporting in line with the Liquidity Coverage Requirement under the Capital Requirements Regulation

October 27, 2018: FCA consultation on proposed changes to the rules governing P2P platforms

October 29, 2018: Comment deadline for interim final rule regarding expanded 18-month examination cycle for certain small insured depository institutions and U.S. branches and agencies of foreign banks

November 2, 2018: FCA discussion paper on the potential introduction of a new duty of care for financial services firms

November 27, 2018: EBA consultation on revised ITS for reporting of securitization information

November 27, 2018: EBA consultation on revised ITS for supervisory reporting under the Capital Requirements Regulation

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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This memorandum 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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