

Financial Regulatory Developments Focus



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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.

Bank Prudential Regulation & Regulatory Capital

Federal Reserve Issues Annual Threshold Adjustment for Small Loans Exemption for Special Appraisal Requirements

On December 23, 2014, the Governors of the Federal Reserve Board (“Federal Reserve Board”) issued an annual technical adjustment regarding the exemption of small loans from special appraisal requirements applicable to higher-priced mortgage loans.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) required creditors to obtain a written appraisal based on a physical visit of the home’s interior prior to making a higher-priced mortgage loan. However, the rule also created an exemption for loans of \$25,000 or less with an annual adjustment based on the annual percentage change in the Consumer Price Index (“CPI”).

Based on the increase in the CPI for Urban Wage Earners and Clerical Workers as of June 1, 2014, the loan exemption threshold was adjusted to \$25,500. The amendment will be effective January 1, 2015.

The Federal Register notice is available at:

<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20141223a1.pdf>.

European Banking Authority Issues Report and Opinion on Securitization Retention, Due Diligence and Disclosure Requirements under CRD IV

On December 22, 2014, the European Banking Authority (“EBA”) issued a report followed by an opinion on securitization retention, due diligence and disclosure requirements under the Capital Requirements Directive IV (“CRD IV”) package. The report assesses the compliance and measures taken by national competent authorities in relation to securitization risk retention, due diligence and disclosure requirements and the opinion makes nine recommendations on the overall appropriateness of requirements related to exposures to transferred credit risk, and

one recommendation on the convergence of the retention rules regulatory frameworks.

The report and opinion are available at:

<http://www.eba.europa.eu/documents/10180/534414/Securitisation+Risk+Retention+Report.pdf> and

<http://www.eba.europa.eu/documents/10180/657547/EBA+OP+2014+14%28%20Securitisation+Risk+Retention+Opinion%29.pdf>.

European Banking Authority Issues Guidelines on Materiality, Proprietary and Confidentiality

On December 23, 2014, the EBA published its guidelines on materiality, proprietary and confidentiality, and disclosure frequency under CRD IV. The guidelines form part of the EBA's strategy to increase transparency within the EU banking sector and aim to increase consistency in Pillar 3 disclosure practices. The guidelines provide a framework that covers the processes that should be followed and criteria that should be considered in the assessment of the use of any disclosure waiver, and sets out the information that should be provided by institutions when using disclosure waivers. The EBA requires national competent authorities to inform the EBA by February 23, 2015 if they comply or intend to comply with the guidelines.

The guidelines are available at:

<http://www.eba.europa.eu/documents/10180/937948/EBA+GL+2014+14+%28Guidelines+on+disclosure%29.pdf>.

UK Financial Conduct Authority Consultation on Seven New Benchmarks

On December 22, 2014, the Financial Conduct Authority ("FCA") issued a consultation paper on the seven additional UK-based financial benchmarks that it anticipates to regulate from April 2015. The Inter-Bank Offered Rate (known as LIBOR) is currently the FCA's only regulated benchmark. The seven additional benchmarks are: (i) the Sterling Overnight Index Average; (ii) the Repurchase Overnight Index Average; (iii) ISDAFIX; (iv) the WM/Reuters London 4pm Closing Spot Rate; (v) London Gold Fixing; (vi) the London Bullion Market Association Silver Price; and (vii) the ICE Brent Index. The consultation proposes that benchmark administrators will be required to: (i) implement governance and oversight practices as well as an oversight committee so that robust measures are in place to administer the benchmarks; (ii) examine and keep records of benchmark submissions, so that breaches of practice standards and potentially manipulative behavior are swiftly identified; (iii) maintain adequate financial resources to be able to cover operating costs for six months; and (iv) appoint a FCA approved individual to ensure the firm's compliance with the FCA's requirements for benchmark administration. The consultation closes on January 30, 2014.

The consultation paper is available at:

<http://www.fca.org.uk/your-fca/documents/consultation-papers/cp14-32>.

Basel Committee Consults on Design of Capital Floor Framework and Revisions to Standardized Approach for Credit Risk

On December 22, 2014, the Basel Committee on Banking Supervision (“Basel Committee”) published consultations on: (i) capital floors and the design of a framework based on standardized approaches; and (ii) revisions to the standardized approach for credit risk. The consultation paper on the capital floor framework design forms part of measures being developed by the Basel Committee to enhance the reliability and comparability of risk-weighted capital ratios. The paper deals with issues including: (i) the scope of aggregation; (ii) adjustments for differences in the treatment of provisions between the standardized and internally modeled approaches for credit risk; and (iii) the choice of the standardized approach. The consultation paper on revisions to the standardized approach for credit risk aims to enhance the existing regulatory capital standard, and proposes revisions to areas including bank exposures and credit risk mitigation. Both consultation periods close on March 27, 2015.

The consultation papers are available at: <http://www.bis.org/bcbs/publ/d306.pdf> and <http://www.bis.org/bcbs/publ/d307.pdf>.

Consumer Protection

European Supervisory Authorities Consult on Regulating Cross-Selling of Financial Products

On December 22, 2014, the Joint Committee of the European Supervisory Authorities (“ESAs”) (made up of the EBA, European Securities and Markets Authority (“ESMA”) and European Insurance and Occupational Pensions Authority) published a consultation paper on the draft guidelines developed to regulate the cross-selling of financial products across the EU. The guidelines are addressed to national competent authorities and include practical examples and principles establishing an efficient approach to supervise firms offering cross-selling services. The guidelines aim to enhance customer protection, as additional risks can arise when two or more financial products are bought together. The consultation closes on March 22, 2014.

The consultation is available at:
<http://www.eba.europa.eu/documents/10180/936747/JC+CP+2014+05+%28Consultation+Paper+on+Cross+Selling%29.pdf>.

Credit Ratings

SEC Issues Annual Staff Report on Examination Results of Credit Ratings Agencies

On December 23, 2014, the US Securities and Exchange Commission (“SEC”) issued an annual staff report on the results of examinations of credit rating agencies registered as nationally recognized statistical rating organizations (“NRSROs”) as required by the Dodd-Frank Act. The examinations covered the eight areas as laid out in the Dodd-Frank Act as well as information technology, cyber security, and certain ratings activities. In the examinations,

recommendations were made for: (i) the use of affiliates or third-party contractors in the credit rating process; (ii) the management of conflicts of interest related to the rating business operations; and (iii) the adherence to policies and procedures for determining or reviewing credit ratings. The SEC also submitted a separate report on NRSROs to Congress. The report reviews the state of competition, transparency, and conflicts of interest at NRSROs. It further contains a discussion regarding the new requirements for NRSROs adopted by the SEC in August 2014 to increase transparency and accountability.

The annual SEC staff report is available at:

<http://www.sec.gov/ocr/reportspubs/special-studies/nrsro-summary-report-2014.pdf>.

The report to Congress is available at:

<http://www.sec.gov/ocr/reportspubs/annual-reports/nrsroannrep1214.pdf>.

European Supervisory Authorities Discussion Paper on Use of Credit Ratings

On December 23, 2014, the ESAs issued a discussion paper on the use of credit ratings by financial intermediaries. The paper sets out a number of questions to banks and other financial institutions as well as intermediaries and national competent authorities about reliance on credit ratings where reliance is not required by the existing regulatory framework. The replies will be used in an academic and independent study to prepare a first draft of possible alternatives to credit ratings. The consultation period ends on February 27, 2015.

The discussion paper is available at:

<http://www.esa.europa.eu/documents/10180/937676/JC+DP+2014+01++Discussion+Paper+on+Use+of+Credit+Ratings+by+Financial+Intermediaries.pdf>.

Enforcement

Federal Deposit Insurance Corporation Enforcement Actions against Banks and Individuals

On December 29, 2014, the Federal Deposit Insurance Corporation released a list containing 36 enforcement actions against banks and individuals for the month of November. The list consisted of 34 orders, one adjudicated decision, and one notice generally involving smaller community and state banks. Of the 34 orders, there were four consent orders, 11 removal and prohibition orders, nine section 19 orders, one civil money penalty, nine orders terminating consent orders and cease and desist orders, one adjudicated decision, and one notice.

All orders are available at:

<https://www.fdic.gov/news/news/press/2014/pr14115a.html>.

Funds

European Securities and Markets Authority Discussion Paper on Share Classes of Undertakings for Collective Investment in Transferable Securities

On December 23, 2014, ESMA published a discussion paper on share classes of Undertakings for Collective Investment in Transferable Securities (“UCITS”), further to the UCITS Directive recognizing the possibility for UCITS to offer different share classes to investors. The discussion paper seeks to develop a common understanding of what constitutes a share class, as well as how to distinguish different share classes. ESMA aims to ultimately develop a final position on the matter, as currently, national practices are understood to vary significantly. The consultation period ends on March 27, 2015.

The discussion paper is available at: <http://www.esma.europa.eu/content/Discussion-Paper-Share-classes-UCITS>.

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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