

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

Transitional Periods Further Extended for Own Funds Requirements for Exposures to CCPs

On June 4, 2018, a Commission Implementing Regulation was published in the Official Journal of the European Union, following a consultation by the European Commission in April 2018 which closed on May 15, 2018. The Commission Implementing Regulation extends the transitional periods related to own funds requirements for exposures to CCPs that are set out in the Capital Requirements Regulation and the European Market Infrastructure Regulation.

Thirty-two third-country CCPs have been recognized by the European Securities and Markets Authority to date. However, a number of third-country CCPs are still awaiting recognized status and their recognition process is not scheduled to be completed by the expiry of the existing CRR and EMIR transitional periods on June 15, 2018. Without an extension of the transitional periods, banks and investment firms in the EU (or which are subject to consolidated supervision in the EU) would need to increase their own funds requirements for their exposures to those CCPs that are awaiting recognized status.

The Commission Implementing Regulation takes effect on June 7, 2018 and will apply directly across the EU. The effect of the Commission Implementing Regulation is to extend the transitional periods by a further six months, to expire on December 15, 2018.

The Commission Implementing Regulation ((EU) 2018/815) is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0815&from=EN>.

Financial Stability Board Seeks Comment on Technical Implementation of TLAC

On June 6, 2018, the Financial Stability Board sought feedback on the technical implementation of standards on the adequacy of total loss-absorbing and recapitalization capacity for Global Systemically Important Banks in resolution—the TLAC Standard. The FSB wants to assess whether implementation aligns with the timelines and objectives set out in the TLAC Standard. The TLAC Standard is being phased in, with G-SIBs expected to reach the first minimum requirement by January 1, 2019.

The FSB is due to report to the G20 on the implementation of TLAC by the end of 2019. The comments provided in response to the call for feedback will help the FSB to prepare that report. The FSB highlights that the objective of the call for feedback is to monitor implementation by jurisdictions of the TLAC Standard and to identify whether there are any technical issues or operational challenges in implementation. The aim is not to seek views on the substantive aspects of the standard or whether any changes should be made to it. The FSB will consider whether further implementation guidance is needed based on the feedback.

The FSB requests views and evidence on:

- The regulatory adoption of the TLAC principles and Term Sheet;
- Cross-border aspects of the implementation of the TLAC Standard;
- G-SIBs' issuance strategies and overall progress towards meeting external and internal TLAC requirements;
- Distribution of TLAC instruments and liabilities in the market; and
- Any technical issues or material factors impacting implementation of the TLAC Standard.

Responses to the call for feedback should be submitted via email by August 20, 2018.

The call for feedback is available at: <http://www.fsb.org/wp-content/uploads/P060618.pdf>.

Basel Committee on Banking Supervision's 2018-2019 Work Program

On June 5, 2018, the Basel Committee on Banking Supervision published its 2018–2019 work program, setting out its focus areas for policy development, supervision, implementation and monitoring. Industry will welcome the news that the Committee intends to adopt a limited number of new policy initiatives, concentrating primarily on cyber risk, operational resilience and proportionality. On the implementation of the Committee's post-crisis reforms, one of the more immediate actions will be to finalize the revised market risk framework, which is due to be implemented by January 1, 2022. Other revisions to be finalized include the assessment framework for G-SIBs and the Pillar 3 disclosure framework. Other work will include:

- Furthering discussions on the regulatory treatment of sovereign exposures.
- Continuing to promote strong supervision, which will involve holding discussion sessions and workshops on emerging challenges for supervision, such as how supervisors should comprehensively assess risks when banks change their business models, oversight of third-party origination practices and oversight of risk management practices, in particular, lending standards, collateral management and valuation practices.
- Finalizing the principles on stress-testing practices in 2018 and, if needed, adopting further guidance on Pillar 2 practices.
- Evaluating and monitoring the impact of its reforms and assessing emerging risks.
- Assessing whether any measures are merited in relation to crypto-assets and monitoring the risks arising from fintech.

The Basel Committee will also continue to monitor steps taken or planned by its member jurisdictions and the timeliness of implementation by members of Basel standards. The Basel Committee will report in October 2018 on the adopting of Basel standards by its member jurisdictions.

The Basel Committee's work programme is available at:

https://www.bis.org/bcbs/bcbs_work.htm?m=3%7C14%7C573%7C72#workprogramme.

Financial Market Infrastructure

European Money Markets Institute Announces Cessation of Three Euribor Tenors

On June 7, 2018, the European Money Markets Institute announced the planned cessation of three of the current tenors for the Euro Interbank Offered Rate (Euribor). EMMI is the administrator for Euribor, a major euro interest reference rate for unsecured interbank short-term lending and borrowing. Euribor was classed as a critical benchmark of systemic importance for financial stability by the European Commission in 2016.

EMMI published a consultation paper in March 2018 seeking views from stakeholders on a proposed hybrid determination methodology for Euribor that will transition Euribor away from a quote-based to a transaction-based methodology. As part of that consultation, EMMI sought feedback on whether to discontinue the calculation and publication of three of the eight tenors it publishes, due to low levels of activity underpinning the markets those tenors represent. The majority of respondents to the consultation supported the discontinuation of the two week, two month and nine month tenors and consequently EMMI will proceed with its proposal.

To allow market participants adequate time to adjust to this change, including through appropriate contractual arrangements, the cessation of the three tenors will take effect from December 3, 2018.

EMMI intends to issue a feedback paper on the other aspects of its consultation by the end of June 2018.

The announcement is available at: https://www.emmi-benchmarks.eu/assets/files/D0237B-2018-CESSATION_OF_EURIBOR_TENORS.pdf and details of the March 2018 consultation on the Euribor Methodology is available at: <https://finreg.shearman.com/european-money-markets-institute-consults-on-hybr>.

Payment Services

Bank of England Consults on Phased Move to Global Messaging Standards for UK Payment Systems

On June 7, 2018, the Bank of England published a consultation on adopting ISO 20022, the global messaging standard for payments which was first introduced in 2004 by the International Organization of Securities Commissions. Ten jurisdictions have already implemented the standard and another nine are intending to implement it by 2023, including the U.S., Canada, Singapore and the Eurozone. The consultation has been prepared in conjunction with the U.K. New Payment System Operator and the U.K. Payment Services Regulator.

It is intended that ISO 20022 will be adopted across the U.K.'s three main interbank payment systems, namely CHAPS, BACS and Faster Payments. The BoE took over responsibility for the operation of the CHAPS system in November 2017 and the NPSO is responsible for the operation of BACS and Faster Payments. The fact that the three payment systems currently all have different information requirements, methodologies, formats, standards and rulebooks means that it can be difficult and expensive to move customers' payments between the systems and costly for new entrants wishing to participate in payment systems. Moving to ISO 20022 will address these and related issues.

Adoption of ISO 20022 will be facilitated by forthcoming major changes to the payment systems infrastructure: the renewal of the infrastructure of the BoE's Real Time Gross Settlement service for CHAPS payments and the New Payments Architecture which will replace BACS and Faster Payments.

The consultation sets out proposals developed over 18 months in close consultation with a wide range of stakeholders across the U.K. payments landscape. It is envisaged that implementation will be a complex, multi-phase and multi-year process. Three key complimentary proposals are outlined:

- Establishing a common message format for credit payments across CHAPS, BACS and Faster Payments, which will be known as the Common U.K. Credit Message, or CCM. The CCM will replace the individual payment systems' requirements with a common set of definitions, structures and rules for inputting data into a payment message. In addition to providing domestic interoperability, the CCM has also been designed to be compatible with the international harmonization framework, HPVS+, which will ensure efficiencies in cross-border payments.
- Implementing the CCM in CHAPS, including proposals to phase in data enhancements and to make mandatory the inclusion of several pieces of information in a CHAPS message that are not currently required (for example by requiring, for a CHAPS payment between financial institutions, a Legal Entity Identifier or other organizational identifiers and details of the purpose of the payment).
- Migrating CHAPS to ISO 20022 on a phased basis starting in 2021 at the earliest.

The BoE has also published a separate factsheet to accompany the consultation.

Comments on the consultation are invited by July 18, 2018. Respondents will need to register via the consultation webpage to provide comments. The BoE plans to publish a response to the consultation by the end of 2018.

The consultation is available at: <https://www.bankofengland.co.uk/-/media/boe/files/payments/iso-20022-consultation-paper.pdf>, the consultation webpage is available at: <https://www.bankofengland.co.uk/payment-and-settlement/rtgs-renewal-programme/consultation-on-a-new-messaging-standard-for-uk-payments-iso20022#register> and the factsheet is available at: <https://www.bankofengland.co.uk/-/media/boe/files/payments/iso-20022-factsheet.pdf>.

Recovery & Resolution

US Board of Governors of the Federal Reserve System Announces Scheduled Release Date for Stress Test and CCAR Results

On June 7, 2018, the U.S. Board of Governors of the Federal Reserve System announced the dates for the release of the results from the most recent round of supervisory stress tests conducted as part of the Dodd-Frank Act and related Comprehensive Capital Analysis and Review exercise. The results from the D-FAST supervisory stress tests and CCAR will be released on June 21, 2018 and June 28, 2018, respectively.

The Full text of the Federal Reserve Board press release is available at:

<https://www.federalreserve.gov/newsevents/pressreleases/bcreg20180607a.htm>.

Financial Stability Board Launches Third Thematic Peer Review on Bank Resolution Planning

On June 4, 2018, the FSB launched its third thematic peer review on bank resolution planning, with the aim of evaluating implementation, by FSB member jurisdictions, of the resolution planning standard contained in the FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions and associated guidance for banks.

The third thematic peer review will cover resolution planning for all globally or domestically systemically important banks in FSB member jurisdictions and any other banks that could be systemic in failure and that are included in resolution planning at a jurisdictional level. Given that much of the FSB's work has focused on G-SIBs in recent years, the focus of this third review will be on banks other than G-SIBs. It will consider how, and to what extent, the expectations in FSB guidance have been applied to these institutions.

The FSB is seeking feedback from financial institutions, industry, consumer associations and other stakeholders on aspects of bank resolution planning that are covered by the peer review, including on:

- The adequacy and nature of requirements and practices for resolution planning in FSB jurisdictions, including proportionality considerations for different types of banks;
- The nature and scope of guidance issued by national regulators on resolution planning;
- Experiences and challenges from the development of resolution strategies and plans, including in a cross-border context;
- The adequacy of public disclosures on bank resolution planning; and
- Experiences and challenges in addressing barriers to resolvability, and implications for resolution planning.

A separate questionnaire has already been sent to national regulators in FSB member jurisdictions. Feedback from stakeholders is invited by July 4, 2018 via email. Individual submissions will not be made public. The FSB expects to publish a peer review report in the first half of 2019.

The Thematic Review Terms of Reference are available at: <http://www.fsb.org/2018/06/thematic-peer-review-on-bank-resolution-planning-summary-terms-of-reference/> and the FSB's Key Attributes of Effective Resolution Regimes are available at: <http://www.fsb.org/2014/10/key-attributes-of-effective-resolution-regimes-for-financial-institutions-2/>.

People

Bao Nguyen and Ted Dowd Named Deputy Chief Counsels of the US Office of the Comptroller of the Currency

On June 6, 2018, the U.S. Office of the Comptroller of the Currency announced that it had selected Bao Nguyen and Ted Dowd to serve as Deputy Chief Counsels in the OCC's Office of the Chief Counsel. Mr. Nguyen will serve as the Principal Deputy Chief Counsel and the OCC Law Department's chief operating

officer. Mr. Nguyen will also supervise the Bank Activities and Structure and the Community and Consumer Law divisions, and the Northeast district counsel office. Mr. Dowd will supervise the OCC's Legislative and Regulatory Activities and Securities and Corporate Practices divisions, and the Central and Western district counsel offices.

The full text of the OCC press release is available at: <https://www.occ.treas.gov/news-issuances/news-releases/2018/nr-occ-2018-57.html>.

Upcoming Events

June 14, 2018: U.S. Board of Governors of the Federal Reserve System meeting to vote on a final rule to establish single-counterparty credit limits for large U.S. bank holding companies and foreign banking organizations.

June 14, 2018: U.S. Senate Committee on Banking, Housing, and Urban Affairs hearing: "Update from the Comptroller of the Currency"; witness will be The Honorable Joseph M. Otting, Comptroller of the Currency.

June 27, 2018: EBA public hearing on draft Guidelines on disclosure of non-performing and forborne exposures (registration closes June 5, 2018)

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

June 15, 2018: ESAs' consultation on revised RTS relating to the EMIR clearing obligation for certain classes of OTC derivatives

June 15, 2018: ESAs' consultation on revised RTS on risk-mitigation techniques for OTC derivative contracts not cleared by a CCP

June 20, 2018: FCA consultation on Model Driven Machine Executable Regulatory Reporting

June 20, 2018: Basel Committee consultation on revisions to minimum capital requirements for market risk

June 21, 2018: FCA consultation on its approach to supervision

June 21, 2018: FCA consultation on its approach to enforcement

June 21, 2018: European Commission consultation on a proposed Commission Delegated Regulation amending delegated legislation under MiFID II

June 21, 2018: European Commission consultation on a proposed Commission Delegated Regulation amending delegated legislation under the IDD

June 21, 2018: European Commission consultation on a Draft Delegated Regulation amending MiFID II secondary legislation, to promote SME Growth Markets

June 22, 2018: EBA consultation on RTS on the specification of the nature, severity and duration of an economic downturn

June 22, 2018: EBA consultation on estimation of loss given default appropriate for conditions of an economic downturn

June 25, 2018: U.S. Federal Reserve Board and OCC proposed amendments to supplementary leverage ratio calculations for G-SIBs and their insured depository institution subsidiaries

June 26, 2018: European Commission consultation on revisions to the Delegated Acts on the safe-keeping duties of Depositaries under AIFMD and the UCITS Directive

June 28, 2018: FCA consultation on revising the Financial Crime Guide to include insider dealing and market manipulation

July 4, 2018: FSB thematic peer review on bank resolution planning

July 5, 2018: FCA consultation on improving disclosure by AFMs to their investors (part of the Asset Management Market Study)

July 6, 2018: FSB consultation on proposed Recommendations for consistent national reporting of data on the use of compensation tools to address misconduct risk

July 9, 2018: FCA consultation on its approach to ex post impact evaluation

July 13, 2018: U.S. Federal Reserve Board, FDIC and OCC proposed amendments to regulatory capital rules to address changes to U.S. GAAP

July 17, 2018: EBA consultation on draft Guidelines on the exposures to be associated with high risk

July 18, 2018: BoE consultation on ISO 20022 migration for U.K. payment systems

July 20, 2018: EBA consultation on draft guidelines on STS criteria for ABCP securitization

July 20, 2018: EBA consultation on draft guidelines on STS criteria for non-ABCP securitization

July 24, 2018: European Commission proposal for a regulation on Sovereign Bond-Backed Securities

July 24, 2018: European Commission consultation on a proposed Regulation amending the Benchmarks Regulation

July 25, 2018: European Commission consultation on a proposal for Regulation amending MAR and the PR to promote SME Growth Markets

July 27, 2018: EBA consultation on draft Guidelines on disclosure of non-performing and forborne exposures

August 20, 2018: FSB call for feedback on the technical implementation of the TLAC Standard

August 22, 2018: PRA consultation on Securitization: the new EU framework and significant risk transfer

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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