

Financial Regulatory Developments Focus



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In this newsletter, we provide a snapshot of the principal European, US and global financial regulatory developments of interest to banks, investment firms, broker-dealers, market infrastructures, asset managers and corporates.

Derivatives

ESMA Advances Intention to Ease Frontloading Requirements under EMIR

On 8 May 2014, the European Securities and Markets Authority (“ESMA”) sent a letter to the European Commission in relation to its intention to ease certain frontloading requirements under the European Market Infrastructure Regulation (“EMIR”). Frontloading refers to clearing obligations under EMIR, which require counterparties to centrally clear certain derivative trades entered into after a central counterparty has been authorized under EMIR to clear such transactions but before the EMIR clearing obligation comes into force. ESMA has informed the Commission that it plans to establish the frontloading requirements in a way that will minimize uncertainty. ESMA believes that the frontloading procedure can create uncertainties for derivatives end-users in situations where precise terms of a clearing obligation have not yet been defined, which can cause an adverse impact on risk hedging and financial stability.

ESMA’s letter to the Commission is available here:

http://www.esma.europa.eu/system/files/2014-483_letter_to_european_commission_re_frontloading_requirement_under_emir.pdf.

Bank Prudential Regulation

EBA Consultation on RTS to Specify Treatment of Equity Exposure under the IRB Approach

On 7 May 2014, the European Banking Authority (“EBA”) initiated a consultation on draft Regulatory Technical Standards (“RTS”) to specify the treatment of equity exposures under the Internal Ratings-Based (“IRB”) approach. The RTS propose that a temporary exemption from IRB treatment of certain equity exposures is given by the national regulators to institutions if such an exemption was applied on the last day of application of the Capital Requirements Directive I (“CRD I”) (i.e. 31 December 2007). This exemption was introduced in CRD I to

partly relieve institutions' capital requirement for equity exposures under the IRB approach. The consultation runs until 7 July 2014.

The draft consultation paper is available here:

<http://www.eba.europa.eu/documents/10180/684133/EBA+CP+2014+06+Draft+consultation+paper+on+RTS+on+the+IRB+equity+exemption>.

ECB Publishes Second SSM Quarterly Report

On 6 May 2014, the ECB published its second Single Supervisory Mechanism ("SSM") quarterly report on the supervision of Eurozone banks by the ECB. The report, which is required under the Single Supervisory Mechanism Regulation ("SSM Regulation") summarizes the ECB's operational progress in establishing the SSM Regulation between 4 February and 3 May 2014.

The report contains key messages relating to the ECB's SSM initiative, including details on:

1. The establishment of the SSM governance structures, which have largely been completed.
2. An update on the ECB's progress conducting the comprehensive assessment, which is designed to establish transparency surrounding the condition of banks and identify and implement corrective actions where necessary.
3. The adoption of the SSM Framework Regulation (published on 25 April 2014) by the Governing Council on a proposal of the Supervisory Board. The framework sets out practical arrangements for the implementation of Article 6 of the SSM Regulation (concerning cooperation between the ECB and National Competent Authorities ("NCAs")).
4. The approval by the Supervisory Board of a Supervisory Reporting Manual, which will provide the data framework to support the conduct of supervision.
5. Developments to the supervisory model of the SSM (as reflected in the draft Supervisory Manual), made in response to feedback from the NCAs.
6. The establishment of Joint Supervisory Teams, who will directly supervise approximately 130 banking groups considered 'significant' in accordance with the SSM Regulation.

On 6 May, the ECB also published answers to frequently asked questions about the SSM.

The ECB Report is available here:

<http://www.ecb.europa.eu/pub/pdf/other/ssmqr20142en.pdf>.

The ECB FAQs page is available here: <http://www.ecb.europa.eu/ssm/html/ssm-faq.en.html>.

ECB Publishes Decision Concerning the Establishment of the SSM Administrative Board of Review

On 5 May 2014 the ECB published a decision (ECB/2014/16) concerning the establishment of the Administrative Board of Review and its operating rules.

The purpose of the Administrative Board of Review is to carry out internal administrative reviews of the decisions taken by the ECB in the exercise of its powers under the SSM Regulation. The decision sets out provisions relating to the governance of the board and the procedures that should be followed by the board and the ECB relating to administrative reviews required under Article 24 of the Regulation.

The decision will enter into force the day after it is published in the Official Journal of the EU.

The ECB decision is available here:

http://www.ecb.europa.eu/ecb/legal/pdf/en_dec_2014_16_f_sign.pdf.

EBA Publishes Quarter 1 "Dashboard" on EU Banking Sector

On 6 May 2014, the EBA published its "risk dashboard" (based on data from the fourth quarter of 2013) for the first quarter of 2014.

The dashboard summarizes the main risks and vulnerabilities in the EU banking sector, including a set of key risk indicators from 55 EU banks which the EBA has been collecting each quarter since 2009. The EBA dashboard is available here:

<http://www.eba.europa.eu/documents/10180/679742/EBA+Dashboard+-+Q1+2014.pdf>.

FSB Launches Phase 2 of its Data Gaps Initiative

On 6 May 2014, the Financial Stability Board ("FSB") issued a paper regarding the launch of Phase 2 of its Data Gaps initiative to implement a common data template to collect key data from Global Systemically Important Banks (G-SIBs) regarding their assets and liabilities. The intention is for national regulatory authorities to have a strong framework through which to assess the links among the largest banks and the concentration of these institutions in different sectors and markets. Banks will be required to report monthly in respect of any data collected, but will later be expected to improve their capability to report more frequently and periodic assessments will determine how banks should move from monthly to weekly reporting.

The Phase 2 template is made up of two parts: the first requires banks to report their largest wholesale secured and unsecured funding providers (excluding traded debt securities), and given that reporting banks are not typically able to identify the current holders of their traded debt securities, the second part requires the institution to report its holdings of tradable debt securities issued by any other G-SIBs' consolidated banking group. The FSB also reviewed a roadmap for Phase 3, when the common template will include granular and comparable

institution-to-aggregate (I-A) consolidated balance sheet data broken down by country, sector, instrument, currency and maturity.

The FSB paper is available here:

http://www.financialstabilityboard.org/publications/r_140506.pdf.

Federal Reserve Board Invites Comment on Proposed Rulemaking Implementing Section 622 of the Dodd-Frank Act

On 8 May 2014, the Board of Governors of the Federal Reserve System (“Federal Reserve Board”) issued a notice of proposed rulemaking that would implement section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), which prohibits a financial company from combining with another company if the ratio of the resulting financial company’s liabilities exceeds 10 percent of the aggregate consolidated liabilities of all financial companies. Financial companies subject to the concentration limit would include insured depository institutions, bank holding companies, savings and loan holding companies, foreign banking organizations, companies that control insured depository institutions, and nonbank financial companies designated by the Financial Stability Oversight Council (“FSOC”) for Federal Reserve Board supervision.

Comments on the proposal should be submitted by 8 July 2014.

The full text of the proposed rule is available at:

<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20140508a1.pdf>

Financial Market Infrastructure

ECB Publishes Proposals for Best Practice on T2S Markets Migrating to T+2 Settlement Cycle

On 6 May 2014, the European Central Bank (“ECB”) published the TARGET2-Securities (“T2S”) Harmonisation Steering Group (“HSG”) proposals in relation to best practices for T2S markets migrating on 6 October 2014 to the T+2 settlement cycle. The HSG has established a task force on T+2 to ensure suitable co-ordination relating to the change in settlement cycle, and to minimize the impact of moving to T+2 for market participants. Section 1 of the proposal deals with the scope of the T+2 settlement cycle, section 2 covers the migration plans of markets to move to the T+2 rule and section 3 discusses ideas relating to timely completion of the post-trade and pre-settlement activities, as well as the monitoring of matching timelines and settlement fails.

The proposals are available here:

http://www.ecb.europa.eu/paym/t2s/progress/pdf/taskforcet2/2014-05-02_HSG_proposals.pdf?56f9ebc5f33842ba6deb57dd94a483bb.

Credit Ratings

European Commission's Implementing Decisions on Credit Rating Agencies Published in the Official Journal

On 3 May 2014, the Official Journal of the EU (issue L132) published five European Commission implementing decisions relating to the equivalence of jurisdictions' legal and supervisory frameworks to the requirements of the Credit Rating Agencies Regulation (Regulation 1060/2009). These implementing decisions were adopted by the Commission on 28 April 2014.

The decisions relate to:

1. Argentina (2014/246/EU, at page 68);
2. Brazil (2014/245/EU, at page 65);
3. Hong Kong (2014/249/EU, at page 76);
4. Mexico (2014/247/EU, at page 71); and
5. Singapore (2014/248/EU, at page 73).

Issue L132 of the Official Journal is available at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2014:132:FULL&from=EN>.

European Commission Publishes Report on Feasibility of Network of Smaller CRAs

On 5 May, the Commission published its report to the Council and European Parliament on the feasibility of a network of smaller Credit Rating Agencies ("CRAs"). The publication of this report was a requirement under the Credit Rating Agencies Regulation (Regulation 1060/2009) and the proposed network was intended to facilitate competition. The Commission's analysis identified multiple market obstacles for the establishment of an integrated network and the consultation showed that there is no industry support to establish such a network. The Commission refers to the CRA III Regulation (Regulation 462/2013) and its aims, specifically to boost competitiveness and support the growth of smaller CRAs on the rating market. The Commission proposes to establish a regulatory dialogue consisting of one or more events each year at which views can be expressed by stakeholders on the state of the market and at which regulatory issues of particular interest for smaller CRAs can be discussed with the Commission.

The Commission's report is available here:

<http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-248-EN-F1-1.Pdf>.

Consumer Protection

CFPB Proposes Rule to Promote More Effective Privacy Disclosures

On 6 May 2014, the Consumer Financial Protection Bureau (“CFPB”) proposed a rule to promote more effective privacy disclosures from financial institutions to their customers. The rule would allow companies that limit their consumer data-sharing and meet other requirements to post their annual privacy notices online rather than delivering them individually. Under the proposal, if an institution qualifies for and wants to rely on the online disclosure method, it will have to inform consumers annually about the availability of the disclosures. Currently, institutions must send consumers a separate communication about privacy disclosures. Under the proposed rule, financial institutions may include an insert in regular consumer communication, such as a monthly billing statement for a credit card, letting consumers know that the annual privacy notice is available online and in paper by request at a toll-free telephone number. If an institution chooses not to use the online disclosure method, it will need to continue to deliver annual privacy notices to its customers.

The full text of the proposed rule is available at:

http://www.consumerfinance.gov/f/201405_cfpb_annual-privacy-notice-proposal.pdf.

Enforcement

HM Treasury Launches Consultation on Processes for Enforcement at FCA and PRA

On 6 May 2014, HM Treasury launched a consultation to review the processes for enforcement decision-making at the Financial Conduct Authority (“FCA”) and the Prudential Regulation Authority (“PRA”). The consultation will seek views on whether the provisions currently in place assist in the fair and effective use of enforcement powers. It sets out the review’s terms of reference and considers the design and governance of arrangements and processes at the FCA and PRA. The deadline for responses to the consultation is 4 July 2014. The review will report to the Chancellor of the Exchequer in autumn 2014.

The consultation paper is available here:

<https://www.gov.uk/government/consultations/review-of-enforcement-decision-making-at-the-financial-services-regulators-call-for-evidence/review-of-enforcement-decision-making-at-the-financial-services-regulators-call-for-evidence>.

Events

Public Hearing on Consultation on Draft RTS to Specify Treatment of Equity Exposure under IRB Approach

A public hearing on the consultation paper on draft RTS on the treatment of equity exposures under the IRB approach will take place at the EBA premises at Tower 42, Level 18, 25 Old Broad Street, London, EC2N 1HQ on 27 May 2014 from 10am to 12pm GMT.

Public Hearing on Consultation on Draft RTS on Risk-Mitigation Techniques for OTC-Derivative Contracts not Cleared by a CCP

A public hearing on the consultation paper on draft RTS on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP will take place at the EBA premises at Level 5, 30 Old Broad Street, London EC2N 1HT from 9am to 7pm.

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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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