



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 Reserve Board Proposes Rule to Modify Capital Planning and Stress Testing Regulations

On July 17, 2015, the US Board of Governors of the Federal Reserve System proposed a rule modifying its regulations for capital planning and stress testing. Specific changes include altering the timing for several requirements that have not yet been integrated into the stress testing framework. Notably, banks subject to the supplementary leverage ratio would not be required to incorporate the ratio into their stress testing until the 2017 cycle. Additionally, all banks would continue to use standardized risk-weighted assets for capital planning and stress testing while the use of advanced approaches risk-weighted assets (applicable to banks with more than \$250 billion in total consolidated assets or \$10 billion in on-balance sheet foreign exposures) would be delayed indefinitely.

The proposal would also remove the requirement that banking organizations calculate a tier 1 common capital ratio. Currently, banks are required to project post-stress regulatory capital ratios in their stress tests using the tier 1 common capital ratio, but as the common equity tier 1 capital ratio becomes fully phased in under the Federal Reserve Board's regulatory capital rule, it would generally require more capital than the tier 1 common capital ratio. The Federal Reserve Board only expected the tier 1 common capital ratio to remain in force until the common equity tier 1 capital requirement was adopted.

The proposed changes would take effect for the 2016 capital plan and stress testing cycles. Comments on the proposal will be accepted through September 24, 2015. The Federal Reserve Board is also currently considering several issues related to its capital plan and stress testing rules and any modifications relating to these issues will be effected through a separate rulemaking, with changes thereunder taking effect no earlier than the 2017 cycle.

The press release is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/20150717a.htm> and the proposed rule is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20150717a1.pdf>.

US Federal Reserve Board Issues G-SIB Surcharge Final Rule

On July 20, 2015, the US Board of Governors of the Federal Reserve System issued a final rule under Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act requiring all US bank holding companies with \$250 billion or more in consolidated total assets or \$10 billion or more in consolidated total on-balance sheet foreign exposures to annually calculate their systemic importance using the methodology in the final rule. BHCs that meet the "G-SIB threshold" will be required to hold additional common equity tier 1 capital (the "G-SIB surcharge") as an addition to the capital conservation buffer under the Federal Reserve's minimum risk-based capital requirements. Eight US firms are currently expected to qualify as G-SIBs under the final rule. Similar to the proposed rule, under the final rule, estimated surcharges for the eight G-SIBs range from 1.0 to 4.5 percent of each firm's total risk-weighted assets. Failure to meet the G-SIB surcharge will result in limitations on a G-SIB's ability to make certain capital distributions and discretionary bonus payments.

The Final Rule is generally similar to the proposed rule issued in December 2014 and is largely based on, but stricter than, an international standard adopted by the Basel Committee on Banking Supervision. The G-SIB surcharge will be phased in starting in 2016, and will become fully effective on January 1, 2019.

The press release is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20150720a1.pdf> and the final rule is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20150720a1.pdf>.

The Shearman & Sterling client publication describing the highlights of the final rule and notable changes from the proposed rule is available at: <http://www.shearman.com/en/newsinsights/publications/2015/07/surcharge-for-global-systemically-important-banks>.

US Federal Reserve Board Issues Final Order that Establishes Enhanced Prudential Standards for General Electric Capital Corporation

On July 20, 2015, the US Board of Governors of the Federal Reserve System issued a final order establishing enhanced prudential standards for General Electric Capital Corporation. GECC is a nonbank financial company designated by the Financial Stability Oversight Council for supervision by the Federal Reserve Board. The final order establishes the application of enhanced

prudential standards in two phases due to the recent announcement by General Electric – the parent company of GECC – of its plan to shrink GECC’s systemic footprint and only retain businesses that support GE’s core business.

Enhanced prudential standards for GECC are similar to those applicable to large bank holding companies with certain alterations to reflect GECC’s unique business model. Enhanced prudential standards include capital requirements, capital-planning and stress-testing, liquidity requirements, and risk-management and risk-committee requirements. GECC must begin compliance with relevant requirements from January 1, 2016.

The press release is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/20150720b.htm>.

European Commission Consults on the Possible Impact of EU Capital Requirements Legislation on Bank Financing of the Economy

On July 15, 2015, the European Commission launched a consultation on the possible impact of the Capital Requirements Regulation and the Capital Requirements Directive on bank financing of the economy. Under the CRR, the European Commission must conduct an analysis of how the CRR may impact the ability of banks to provide lending to the wider economy. The consultation aims for a better understanding of the impact of the CRR requirements on the availability of financing, particularly for infrastructure and other investments that support long-term growth as well as corporate borrowers, including small and medium enterprises. Responses to the consultation will form part of the Commission’s report to the European Parliament and the Council of the EU. The report will also consider the analysis being conducted by the European Banking Authority on SME lending and independent research. The consultation is open until October 7, 2015.

The consultation paper is available at: http://ec.europa.eu/finance/consultations/2015/long-term-finance/docs/consultation-document_en.pdf.

European Banking Authority Releases Draft Details for EU-wide Transparency Exercise and 2016 EU-wide Stress Tests

On July 15, 2015, the EBA published a draft list of banks that would be participating in the EU-wide transparency exercise at the end of 2015, together with draft templates showing the type of data that will be disclosed covering composition of capital, leverage ratio, risk weighted assets by risk type, sovereign exposures, credit risk exposures and asset quality, market risk and securitization exposures as of December 2014 and June 2015. The EBA also announced certain features of the 2016 EU-wide stress test, which is expected to launch in the first quarter of 2016. The assessment and quality checks of the 2016 stress tests are expected to be concluded by the third quarter of 2016 which is when the results of individual banks will also be published.

The EBA’s announcement is available at: <http://www.eba.europa.eu/-/eba-updates-on-upcoming-transparency-exercise-and-on-key-features-of-2016-eu-wide-stress-test>.

European Banking Authority Publishes Amending Standards under Capital Requirements Legislation

On July 16, 2015, the EBA published (i) amending Regulatory Technical Standards on the treatment of non-delta risk of options in the standardized market risk approach; and (ii) amending RTS on the criteria to identify categories of staff whose professional activities have a material impact on a firm’s risk profile. According to the EBA, the amendments are necessary corrections following changes introduced by the European Commission during the legal adoption process of the original RTS. The RTS were prepared under the CRR and CRD.

The amending RTS are available at:

<http://www.eba.europa.eu/documents/10180/529170/FINAL+DRAFT+RTS+CORRECTING+DELEGATED+REGULATION+%28EU%29%20528-+2014.pdf>.

Prudential Regulation Authority Sets Interim LCR Reporting Requirements

On July 20, 2015, the Prudential Regulation Authority published a Supervisory Statement setting out the liquidity coverage requirement reporting standards which firm's will need to comply with on an interim basis between October 1, 2015, the date the LCR applies under the original implementing technical standards, and the date of the new LCR requirements come into effect following the adoption by the European Commission of revised ITS on liquidity reporting. Firms are required to submit LCR data to national regulators under the CRR and CRD. The PRA considers that firms should report their LCR positions in the interim period so that their liquidity resilience can be monitored. However, if firms report their LCR positions according to the

provisions of the original ITS, their LCR positions will not be properly determined. Therefore, the PRA has set out in the Supervisory Statement the data that firms are required to submit in the interim period.

The Supervisory Statement is available at: <http://www.bankofengland.co.uk/pr/Documents/publications/ss/2015/ss2915.pdf>.

Basel Committee Guidelines on Identifying and Dealing with Weak Banks

On July 16, 2015, the Basel Committee for Banking Standards published guidelines for identifying and dealing with weak banks. The guidelines revise and update the 2002 Basel Committee guidance for dealing with weak banks to take into account the changes in regulatory expectations and practices on early intervention, resolution frameworks, recovery and resolution planning, stress testing and macroprudential oversight. The revised guidelines are directed to supervisors and resolution authorities as well as international financial institutions advising supervisors.

The guidelines are available at: <http://www.bis.org/bcbs/publ/d330.pdf>.

Bank Structural Reform

Volcker Rule Frequently Asked Question 16 Addressing Seeding Period Treatment for Registered Investment Companies and Foreign Public Funds

On July 16, 2015, the five US federal financial regulatory agencies – US Federal Reserve Board, the US Office of the Comptroller of the Currency, the US Federal Deposit Insurance Corporation, the US Securities and Exchange Commission and the US Commodity Futures Trading Commission – issued a new Volcker Rule Frequently Asked Question 16 addressing the status of certain US-registered investment companies and foreign public funds as “banking entities” during their “seeding period.” Certain RICs and foreign public funds are currently excluded from the Volcker Rule’s definition of “covered fund” and FAQ 16 ensures that they will not be treated as “banking entities” under the Volcker Rule solely due to a banking entity’s ownership of the registered investment company or foreign public fund during the “seeding period” absent evidence that the RIC or foreign public fund was being used to evade the Volcker Rule’s requirements.

Volcker Rule FAQ 16 is available at: <http://www.federalreserve.gov/bankinforeg/volcker-rule/faq.htm#16>.

Financial Conduct Authority Proposes Rules on Disclosure by Non Ring-Fenced Banks

On July 14, 2015, the Financial Conduct Authority launched a consultation on proposed rules requiring information to be provided to customers by a non-ring-fenced body. The FCA is proposing that a NRFB be required to provide information about its investment and commodities trading activities to individuals with financial assets of at least £250,000 who are account holders or who have applied to open an account. The information is intended to inform customers of the implication of banking with a NRFB entity in a group which includes a ring-fenced bank. The ring-fencing regime is set to apply from January 1, 2019. The FCA’s proposed rules would require a NRFB to provide the information in good time before the regime enters force. A NRFB will also be required to publish the information on its website. Responses to the FCA consultation are due by November 13, 2015. The FCA intends to publish final rules in Q1 2016.

The FCA’s consultation paper is available at: <http://www.fca.org.uk/static/documents/consultation-papers/cp15-23.pdf>.

Competition

Financial Conduct Authority Publishes Final Guidance and Amended Rules on its Concurrent Competition Powers

On July 15, 2015, the FCA published final guidance and amended rules on its new competition law powers. The FCA obtained concurrent competition powers for the provision of financial services on April 1, 2015 which allow it to: (i) conduct investigations under the Competition Act 1998 and the Treaty on the Functioning of the European Union; and (ii) carry out market studies and make market investigation references to the Competition and Markets Authority under the Enterprise Act 2002. The finalized guidance clarifies how the FCA intends to use its new competition powers. The final rules, which come into effect from August 1, 2015, impose an obligation on authorized firms to report to the FCA any significant infringement of any applicable competition law.

The Shearman & Sterling client publication on the FCA's Concurrent Competition Powers is available at:

<http://www.shearman.com/~media/Files/NewsInsights/Publications/2015/07/FCAs-Concurrent-Competition-Powers-Final-Guidance-and-Handbook-Amendments-Are-Published-AT-071515.pdf>.

The FCA Policy Statement, including final rules, is available at: <http://www.fca.org.uk/static/documents/policy-statements/ps15-18.pdf>, the final guidance on the FCA's powers and procedures under the Competition Act 1998 is available at:

<http://www.fca.org.uk/static/documents/finalised-guidance/fg15-08.pdf> and the final guidance on the FCA's market studies and market investigations references functions is available at: <http://www.fca.org.uk/static/documents/finalised-guidance/fg15-09.pdf>.

Derivatives

EMIR Classification Letter Published by the International Swaps and Derivatives Association

On July 13, 2015, the International Swaps and Derivatives Association published an "EMIR Classification Letter" and related guidance. The Letter is intended to help counterparties to determine and communicate their classification under the European Market Infrastructure Regulation. Under EMIR, the obligations of counterparties to a derivatives transaction are dependent on the classification of each counterparty as either a financial counterparty or a non-financial counterparty. The Letter aims to facilitate that determination by asking a series of questions.

The Letter and guidance are available at: <http://www2.isda.org/emir/>.

Financial Services

European Banking Authority Publishes Guidelines on Product Oversight and Governance Arrangements for Retail Banking Products

On July 15, 2015, the EBA published final guidelines on product oversight and governance arrangements for financial institutions as manufacturers of retail banking products and for distributors of retail banking products – mortgages, personal loans, deposits, payment accounts, payment services and electronic money. The guidelines will apply from January 3, 2017 to all products brought to market after that date as well as to existing products that are significantly changed after that (the EBA does not clarify the meaning of "significantly changed"). The guidelines are addressed to EU national regulators and financial institutions and require the establishment of product oversight and governance arrangements for the design, bringing to market and review of retail banking products over their lifecycle. The guidelines supplement the EBA's 2011 guidelines on internal governance but do not cover the suitability of products for individual consumers.

The final guidelines are available at: <http://www.eba.europa.eu/documents/10180/1141044/EBA-GL-2015-18+Guidelines+on+product+oversight+and+governance.pdf> and the guidelines on internal governance are available at: https://www.eba.europa.eu/documents/10180/103861/EBA-BS-2011-116-final-EBA-Guidelines-on-Internal-Governance-%282%29_1.pdf.

People

Federal Reserve Board Governor Nominated

President Barack Obama announced on July 20, 2015, his intent to nominate Dr. Kathryn M. Dominguez to serve on the Board of Governors of the Federal Reserve System. Dr. Dominguez is a Professor of Public Policy and Economics in the Gerald R. Ford School of Public Policy and the Department of Economics at the University of Michigan.

Financial Conduct Authority Chief Executive to Stand Down

The FCA announced on July 17, 2015, that Chief Executive Martin Wheatley would be standing down from September 12, 2015. Mr. Wheatley will continue to act as an advisor to the FCA Board until January 31, 2016, particularly on the implementation of the recommendations of the Fair and Effective Markets Review.

New External Members Appointed to the UK Financial Services Trade and Investment Board

On July 20, 2015, the UK Government announced the appointment of new external members to the Financial Services Trade and Investment Board, the body created in 2013 to ensure that Britain's position as a global finance centre is strengthened. The new

external members are: (i) Helena Morrissey, CEO, Newton and Chair, The Investment Association; (ii) Inga Beale, CEO, Lloyd's of London; (iii) John McFarlane, Chairman, Barclays, and incoming Chairman, TheCityUK; and (iv) Nathan Bostock, CEO, Santander UK.

Chair Appointed to UK Payments Strategy Forum

On July 15, 2015, the UK Payment Systems Regulator announced that Ruth Evans had been appointed as chair of the Payments Strategy Forum and would take up her role on July 27, 2015. The Payments Strategy Forum will be responsible for identifying and developing initiatives that the industry can work together to deliver innovation. A call for members of the Forum was also issued on the same day as the announcement.

Upcoming Events

July 22, 2015: US Senate Committee on Banking, Housing, and Urban Affairs will conduct a hearing entitled "Oversight of the Financial Stability Oversight Council Designation Process."

July 22, 2015: US House of Representatives Financial Services Committee will conduct a hearing entitled "Examining Federal Reserve Reform Proposals."

July 22, 2015: FCA Annual Public Meeting 2015.

July 23, 2015: US Senate Committee on Banking, Housing, and Urban Affairs will conduct a hearing entitled "Measuring the Systemic Importance of US Bank Holding Companies."

July 23, 2015: US House of Representatives Financial Services Committee will conduct a hearing entitled "Ending 'Too Big to Fail': What is the Proper Role of Capital and Liquidity?"

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

July 29, 2015: CFTC's Energy and Environmental Markets Advisory Committee public meeting.

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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