SHEARMAN & STERLING LLP

FINANCIAL INSTITUTIONS ADVISORY & FINANCIAL REGULATORY GROUP
WEEKLY NEWSLETTER

22 APRIL 2014
ISSUE 13/2014

Financial Regulatory Developments Focus

In this issue:

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.

Regulatory Capital

Incorrect Validation Rules in ITS on Supervisory Reporting

On 16 April 2014, the European Banking Authority ("EBA") announced that certain validation rules included in its Implementing Technical Standards ("ITS") on supervisory reporting were incorrect. The EBA published a list of the incorrect validation rules and requested that data submitted under the ITS should not be validated against those rules. An updated list of incorrect rules will be published before 30 June 2014 which is the remittance date for Q1 2014 data. The issue came to the EBA's attention following tests based on real data from reporting firms as well as answers submitted via the EBA's Q&A tool.

The EBA's announcement was made on the same day that the European Commission adopted the ITS on supervisory reporting. The EBA confirmed that the submission dates by banks' to competent authorities of data would be postponed to the end of June 2014. The implementation of the draft ITS on reporting of asset encumbrance has also been postponed and the remittance dates likewise adjusted. The new remittance date is 11 February 2015.

The EBA's announcements are available at: http://www.eba.europa.eu/-/eba-publishes-list-of-incorrect-its-validation-rules; and http://www.eba.europa.eu/-/eba-technical-standards-on-supervisory-reporting-endorsed-with-amended-calendar.

Basel Committee Final Standard of Measuring and Controlling Large Exposures

On 15 April 2014, the Basel Committee on Banking Standards (the "Basel Committee") published the final standard for measuring and controlling large exposures to constrain the maximum loss a bank could face in the event of a sudden failure of a counterparty or group of connected counterparties. The framework is scheduled to take effect from 1 January 2019 and will supersede the Basel Committee's 1991 standard on this topic. Standards or exposures to central counterparties are to be developed by 2016. The final standard includes the following revisions from the previous regime:

- a bank may not become exposed by more than 25% of its Tier 1 capital (or 15% in the case of global systemically important banks); and
- a "large exposure", attracting a reporting "hysteria" is triggered by an exposure of 10% of the bank's eligible capital base.

The final standards are available at: http://www.bis.org/publ/bcbs283.pdf.

Basel Committee FAQs on LCR Framework

On 16 April 2014, the Basel Committee launched its FAQs on the liquidity coverage ratio ("LCR") framework under Basel III. The LCR framework was published in January 2013.

The FAQs are available at: http://www.bis.org/publ/bcbs284.pdf.

Financial Services

MiFID II and MiFIR Adopted by the European Parliament

On 15 April 2014, the European Parliament adopted legislation that will replace the current Markets in Financial Instruments Directive ("MiFID"). The new legislation comprises (a) a revised directive which is an amendment of MiFID covering market structure, scope of exemptions, organizational and conduct of business requirements for investment firms and trading venues, powers of national regulators, sanctions and rules for non-EU firms operating through a branch; and (b) a new regulation ("MiFIR") which set out requirements for trade transparency, mandatory trading of derivatives, the provision of services by non-EU firms without an EU branch and confers a number of new powers on European regulators, the European Securities and Markets Authority and the EBA.

Following approval by the Council of the European Union, MiFID II and MiFIR will be published in the Official Journal of the European Union, currently expected in June 2014. The European Commission must then develop Level 2 legislation implementing certain provisions of the legislation and member states will need to transpose MiFID II into national law. Under the current timetable, MiFID II is expected to enter into force by the end of 2016.

The European Parliament's press release is available at: http://www.europarl.europa.eu/news/en/news-room/content/20140411IPR43438/html/MEPs-vote-laws-to-regulate-financial-markets-and-curb-high-frequency-trading.

Recast Deposit Guarantee Scheme Directive Adopted by the European Parliament

On 15 April 2014, the European Parliament adopted a recast Deposit Guarantee Schemes Directive (the "DGSD") which will replace the current Directive. The recast DGSD will harmonise the scope of covered deposits across the EU, confirm the level of coverage at EUR100 000 per depositor per bank, reduce repayment deadlines to 7 working days from 2024, exclude covered deposits from the bail-in regime and ensure depositor preference in insolvencies and resolutions.

The European Parliament's press release is available at: http://www.europarl.europa.eu/news/en/news-room/content/20140411IPR43458/html/Parliament-lifts-bank-bailout-burden-from-taxpayers%E2%80%99-shoulders.

SEC Proposes Rules for Security-Based Swap Dealers and Major Security-Based Swap Participants

On 17 April 2014, the Securities and Exchange Commission ("SEC") proposed new rules for security-based swap dealers and major security-based swap market participants. The proposed rules cover recordkeeping, reporting, and notification requirements for security-based swap dealers and major security-based swap participants and would establish additional recordkeeping requirements for broker-dealers to account for their security-based swap activities. Comments on the proposed rule are due by 16 June 2014.

The full text of the proposed rule is available at: http://www.sec.gov/rules/proposed/2014/34-71958.pdf

Recovery & Resolution

BRRD Adopted by the European Parliament

On 15 April 2014, the European Parliament adopted the Bank Recovery & Resolution Directive (the "BRRD") which sets out the rules applicable to EU banks and large investment firms in distress. The rules require banks to prepare recovery plans (note, that a lot of banks have already started this exercise). National authorities will be able to intervene with a failing bank and use powers to restructure banks or allocate losses to creditors and shareholders. National authorities will also have powers to resolve banks which have failed, avoiding taxpayer bail-outs and ensuring continuity of critical functions. The BRRD also provides for cross-border resolution of large banks, setting out the cooperation arrangements between national authorities and giving the EBA powers to mediate any disputes. The EBA will also be responsible for preparing draft Level 2 legislation.

The European Parliament's press release is available at: http://www.europarl.europa.eu/news/en/news-room/content/20140411IPR43458/html/Parliament-lifts-bank-bailout-burden-from-taxpayers%E2%80%99-shoulders.

Single Resolution Mechanism Regulation Adopted by the European Parliament

On 15 April 2014, the European Parliament adopted the Single Resolution Mechanism ("SRM") Regulation which will implement a SRM for Eurozone banks. The SRM Regulation is part of the new European Banking Union which applies to financial institutions in the Eurozone. The SRM Regulation establishes a set of common resolution tools that are mandatory for Eurozone member states to insert into their national laws and provides for coordination in the use of those tools through a Single Resolution Board. The Board will also establish a Single Bank Resolution Fund which will be funded by levies from relevant financial institutions and which is intended to support failing banks during their resolution or restructuring. The resolution tools under the SRM Regulation mirror those available under the BRRD.

The European Parliament's press release is available at: http://www.europarl.europa.eu/news/en/news-room/content/20140411IPR43458/html/Parliament-lifts-bank-bailout-burden-from-taxpayers%E2%80%99-shoulders.

Financial Market Infrastructure

CSD Regulation Adopted by European Parliament

On 15 April 2014, the European Parliament adopted a Regulation on securities settlement and central securities depositories (known as the "CSD Regulation"). The CSD Regulation will bring in shorter and more harmonized settlement periods across Europe, impose disciplinary measures for settlement failures, provide for access rights to central securities depositories ("CSDs") and introduce a common authorization, supervision and regulatory framework for CSDs. According to the European Commission's announcement, once the CSD Regulation has been formally approved by the Council of the European Union, it will be published in the Official Journal of the European Union, expected in Q3 2014. The CSD Regulation will come into force and apply directly across the EU on the twentieth day following such publication.

Information on the CSD Regulation is available at: http://ec.europa.eu/internal_market/financial-markets/central_securities_depositories/index_en.htm.

Consumer Protection

CFPB Proposes Revision to Rule Protecting Consumers Sending Money Internationally

On 15 April 2014, the Consumer Financial Protection Bureau ("CFPB") proposed revisions to its international money transfer rule. The revisions are intended to preserve the rule's new consumer protections while providing federally insured institutions, such as banks and credit unions, with additional time to provide exact disclosures in certain cases. The proposal, if finalized, would explicitly allow federally insured financial institutions, like banks and credit unions, to estimate third-party fees and exchange rates when providing remittance transfers to their accountholders for which they cannot determine exact amounts until 21 July 2020, an extension of five years from the previous proposal, which had the exception expire on 21 July 2015. Insured institutions can only use this exception when they cannot determine the exact amounts for reasons beyond their control.

The full text of the proposed revisions is available at: http://www.consumerfinance.gov/f/201404_cfpb_remittances-proposal.pdf.

People

SEC Names David Gottesman as Deputy Chief Litigation Counsel

On 15 April 2014 the SEC announced the appointment of David J. Gottesman as deputy chief litigation counsel in the SEC Division of Enforcement.

The press release is available at: http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370541497164.

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