



Regulatory Radar

Regulatory Newsletter, Issue 19, December 2009

Newsletter on banking and financial regulation

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The final version of the [Walker report](#) on Corporate Governance of Financial Institutions (UK) was published in November 2009. It addresses a wealth of topics on governance of financial institutions, including the composition and required skills in a board, the governance of risk and the remuneration of both board members and the “high end” employees of the financial institutions, i.e. those who can modify the company’s risk profile.

Probably the most contentious part of the review touches on the role of the institutional shareholders. Overall, the underlying idea is that a corset of solvency regulation within which a financial institution should aim at maximizing profit for its shareholders, has proven not to be sufficient in avoiding financial disaster. Rather, one needs the board (as representatives of the shareholders) to also take into account the interest of the depositors. In the words of Walker, the limited liability of a shareholder, should be complemented by a duty of care for other stakeholders (the shareholder as steward).

While proposed in the context of financial institutions, these ideas could dramatically change the investment world and e.g. the role and working of asset managers. If one is dissatisfied with the performance of management or the board, the review states, one should consider selling the shares as only the last means of making your concern heard as a shareholder. Rather, you should first engage in a constructive dialogue with the company to have it change its ways.

As was pointed out amongst others by Prof. Wymeersch, the idea and its practical implementation is fraught with some legal issues. Nevertheless, the topic is on the table, and will likely attract discussion over the months to come.

For a quick view at the main recommendations of the Walker review, please see the presentation given on January 21 at the Guberna round table on Internal Governance in Financial Institutions.

In December, interesting publications have been issued

on topics such as the stability of the financial sector, valuation of property for lending purposes, recommendations and guidelines on Liquidity Risk Management, hybrid capital instruments, concentration risk and on operational risk mitigation techniques.

The Editorial Board.



Financial Services Industry

Normative documents

Official Journal of the European Union (OJ)

[Regulation EU 1293/2009 of 23/12/2009](#) amending Regulation EC 1126/2008 adopting certain international accounting standards in accordance with Regulation EC 1606/2002 as regards IAS 32 - OJ L347 of 24/12/2009.

Recast of [Directive 2009/138/EC of 25/11/2009](#) on taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) - OJ L335 of 17/12/2009.

[Regulation EU 1228/2009 of 15/12/2009](#) amending Regulation EC 423/2007 concerning restrictive measures against Iran – OJ L330 of 16/12/2009.

[Regulation EU 1227/2009 of 15/12/2009](#) repealing Regulation EC 1859/2005 imposing certain restrictive measures in respect of Uzbekistan – OJ L330 of 16/12/2009.

[Regulation EU 1220/2009 of 14/12/2009](#) amending for the 117th time Council Regulation EC 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Osama bin Laden, the Al-Qaida network and the Taliban – OJ L328 of 15/12/2009.

Banking, Finance and Insurance Commission (CBFA)

Financial reporting

On December 1th, the CBFA has published a [circular letter](#) on the transfer of documents by the eCorporate platform.

Consultative or informative documents

European Central Bank (ECB)

Loan-by-loan requirements for ABS

In a [press release](#) of **December 23th**, the ECB launched a [public consultation](#) on the establishment of loan-by-loan information requirements for asset-backed securities (ABSs) in the Eurosystem collateral framework. ABSs account for an important part of the collateral that counterparties post in Eurosystem credit operations. The Eurosystem expects that this asset class, among the wide range of collateral assets that the Eurosystem currently accepts in its collateral framework, will continue to be significant in the future for Eurosystem counterparties.

Financial stability

In a [press release](#) of **December 18th**, the ECB published its [Financial Stability Review December Report December 2009](#). The purpose of publishing this Review is to promote awareness in the financial industry and among the public at large of issues that are relevant for safeguarding the stability of the euro area financial system. By providing an overview of sources of risk and vulnerability for financial stability, the Review also seeks to play a role in preventing financial crises.

European Commission

Responsible lending

On the 30th November 2009 the European Commission published a summary of the [responses](#) to the public consultation on responsible lending and borrowing in the EU.

Packaged Retail Investment Products

On the 16th December 2009 the European Commission published an [update](#) on the Commission's ongoing work on Packaged Retail Investment Products (PRIPs) and further detail on how the Commission will take forward the commitments it made in the 30th April 2009 Communication on PRIPs.

European Parliament

AML

On the 16th December 2009 the European Parliament published a [press release: Freezing of terrorists' bank accounts: MEPs \(Members of European Parliament\) want to have their say.](#)

Monetary exit strategies

On the 7th December 2009 the European Parliament published a [press release: Trichet calls for "timely and](#)

gradual" phasing-out of non-standard measures.

Pros and cons of a financial transaction tax

On the 3rd December 2009 the European Parliament published a [press release: Pros and cons of a financial transaction tax](#).

Monetary exit strategies and systemic risk

On the 1st December 2009 the European Parliament published a [press release: Monetary exit strategies and systemic risk: MEPs hear experts](#).

European Regulators Group (ERG)

Business connectivity services

On the 15th December 2009 ERG published its [report on the regulation of access products necessary to deliver business connectivity services](#).

Banking, Finance and Insurance Commission (CBFA)

In December 2009, the CBFA published its [annual report](#) and made public its [appointment](#) of a new chairman.

Committee of European Securities Regulators (CESR)

Cross-sector internal governance

On **December 18th**, the 3 Level 3 Committees (3L3), CESR, CEBS and CEIOPS, published a [call for evidence](#) on cross-sector internal governance issues. The 3L3 Committees have conducted a stock take on and analysis of existing internal governance requirements applicable in the areas of banking, insurance and securities, and identified some areas for potential further harmonization.

European Mortgage Federation (EMF)

Valuation of property for lending purposes

On December 14th 2009, CEA has published a [study](#) on the valuation of property for lending purposes. The study provides a comprehensive commentary on the valuation practices in 16 Member States, focusing on the valuation itself (regulation/self-regulation, bases and methodology, valuation report, Automated Valuation Models (AVMs)), the valuer (regulation/self-regulation, qualifications, use of title, indemnity insurance), and valuation in the context of the Capital Requirements Directive (covered

bonds and data standards).

Financial Action Task Force (FATF)

AML – Austria

On the 1st December 2009 FAFT published a [↻ Mutual Evaluation Report of Austria](#) 26 June 2009. The assessment of the implementation of anti-money laundering and counter-terrorist financing (AML/CFT) standards in Austria was conducted by a team of assessors composed of staff of the International Monetary Fund (IMF) and one expert acting under the supervision of the IMF. Read the [↻ Executive Summary](#).

MONEYVAL – Azerbaijan

On the 11th December 2009 the Committee of experts on the evaluation of anti-money laundering measures and financing of terrorism (MONEYVAL) published its [↻ public statement under Step VI of MONEYVAL's Compliance Enhancing Procedures](#) in respect of Azerbaijan.

International Monetary Fund (IMF)

Midyear review of Fund's income position for 2010

On the 23rd December 2009 the IMF published its [↻ midyear review of the Fund's income position](#) for the financial year ending April 30, 2010. Read the [↻ press release](#).

International Organization of Securities Commissions (IOSCO)

Emerging market regulation

In December 2009, IOSCO published a [↻ report](#) that provides guidelines to emerging market regulators regarding requirements for minimum entry and continuous risk-based supervision of market intermediaries. IOSCO also published a [↻ report](#) on approaches to market surveillance in emerging markets. Finally the Emerging Markets Committee of IOSCO published a [↻ fit and proper assessment](#) which is intended to provide an overview of best practices.

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Credit institutions and investment firms

Consultative or informative documents

Basel Committee

Consultative proposals to strengthen the resilience of the banking sector

In a [press release](#) of December 17th, the Basel Committee announced the publication of two consultative documents which are part of the Committee's comprehensive response to address the lessons of the crisis related to the regulation, supervision and risk management of global banks. The first consultation is on [strengthening the resilience of the banking sector](#). *The second consultation is on an [international framework for liquidity risk measurement, standards and monitoring](#).* Comments on these consultative documents should be submitted by **16 April 2010**.

Committee of European Banking Supervisors (CEBS)

Guidelines on Liquidity Buffers

In a [press release](#) of December 9th, the CEBS announced the publication of its [guidelines on liquidity buffers](#). These guidelines, which build on [CEBS's Recommendations on Liquidity Risk Management](#), elaborate upon the appropriate size and composition of liquidity buffers to enable banks to withstand a liquidity stress for a period of at least one month without changing their business models.

Guidelines on hybrid capital instruments

In a [press release](#) of December 10th, the CEBS announced the publication of its [implementation guidelines on hybrid capital instruments](#). The guidelines, which are focused on areas where CEBS sees the need for further guidance, are structured into five main parts covering permanence, flexibility of payments, loss absorbency, limits and Special Purpose Vehicles (SPVs).

Guidelines on the revised large exposures regime

In a [press release](#) of December 11th, the CEBS announced the publication its [guidelines in relation to two specific aspects of the revised large exposures regime](#) that has been included in the amended Capital Requirements Directive (CRD). The amendments will have to be transposed into Member States' national law by 31 October 2010 and will be applied from 31 December 2010.

Guidelines on common reporting of large exposures

In a [press release](#) of December 11th, the CEBS announced the publication of its [guidelines in relation to the common reporting of large exposures](#) which will be

included in the COREP framework so as to ensure a unified European reporting system.

Draft guidelines on concentration risk

In a [press release](#) of December 11th, the CEBS announced the publication of its [draft revised guidelines on aspects of the management of concentration risk](#) under the supervisory review process. The consultation is open to all interested parties until March 31th 2010.

Draft revised guidelines on stress testing

In a [press release](#) of December 14th, the CEBS announced the publication of its [revised guidelines on stress testing](#) for consultation. The consultation is open to all interested parties until March 31th 2010.

Revised guidelines on Financial Reporting

In a [press release](#) of December 15th, the CEBS announced the publication of its [revised guidelines on financial reporting](#). The revised guidelines provide for a maximum data model that will ensure a greater degree of harmonization of regulatory reporting requirements in Europe.

Draft implementation guidelines on instruments referred to in Article 57(a) of the CRD

In a [press release](#) of December 17th, the CEBS announced the publication of its consultation paper on its [implementation guidelines on capital instruments](#). The consultation is open to all interested parties until March 31st 2010.

Draft guidelines for the operational functioning of colleges

In a [press release](#) of December 17th, the CEBS announced the publication of its [draft guidelines for the operational functioning of colleges](#). The consultation is open to all interested parties until March 31th 2010.

Draft guidelines on the management of operational risk in market-related activities

In a [press release](#) of December 21st, the CEBS announced the publication of its [draft guidelines on the management of operational risk in market-related activities](#). The consultation is open to all interested parties until March 31th 2010.

Guidelines on operational risk mitigation techniques

In a [press release](#) of December 22nd, the CEBS announced the publication of its [guidelines on operational risk mitigation techniques](#). These guidelines, which build on the provisions of the Capital Requirements

Directive (CRD) and CEBS's Guidelines on the Implementation, Validation and Assessment of AMA and IRB Approaches ([Implementation Guidelines](#)) provide supervisory expectations and clarification on the recognition of risk transfer instruments within the AMA.

European Association of Co-operative Banks (EACB)

Access to finance

On the 3rd December 2009 Hervé Guider, General Manager of EACB, made a [speech](#) on access to finance at the 2nd European Co-operative Banks and SMEs' Forum in Brussels.

European Savings Banks Group (ESBG)

IAS 39 / IFRS 9

On the 4th December 2009 ESBG [supported](#) postponement of adoption of IAS 39/ IFRS 9.

Febelfin

Code of conduct

On December 11th, Febelfin published a [code of conduct](#) that banks and saving institution adhere to in their relations with private person clients.

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Investment products and asset management

Normative documents

Banking, Finance and Insurance Commission (CBFA)

Regulatory updates

On December 9th, the CBFA has published an update of its [practical guide](#) on the transparency legislation (the attachments can be found [here](#)) and of its [circular](#) letter on the requirements for issuers that are quoted on a regulated market.

Consultative or informative documents

Committee of European Securities Regulators (CESR)

UCITS IV Directive

In a [release](#) of **December 22th**, CESR has published **two pieces of work related to the future UCITS IV Directive: a [technical advice on mergers of UCITS, master-feeder UCITS structures and cross-border notification](#) and [two methodologies for Key Investor Document for UCITS](#)**. The technical [advice](#) also includes an annex on methodology for the calculation of the ongoing charges figure.

Short-selling measures

On **December 17th**, CESR published a [statement](#) that facilitates an overview of actions taken by CESR Members in relation to short-selling. The statement paper includes either the statements or links to the statements published by CESR Members explaining the measures taken. This paper is not a comparison of the measures taken.

To open the PDF documents attached to the statement paper, please download the [Word document](#).

European Fund and Asset Management Association (EFAMA)

International Quarterly Statistics

On the 1st December 2009 EFAMA published its [Trends in the European Investment Fund Industry in the Third Quarter of 2009](#). Read the related press release entitled [Net Inflows to European Funds Rise to EUR 70 Billion in Q3 2009 January to September Net Sales Reach EUR 122 Billion](#). Read the [highlights](#).

European Investment Fund

On the 9th December 2009 EFAMA published its [October Monthly Industry Fact Sheet](#). Read the related press release entitled [Long-Term UCITS Funds continue to attract stable net new inflows in October](#).

European Savings Banks Group (ESBG)

MiFID

On the 14th December 2009 ESBG [responded to CESR consultation paper on undertaking the definition of advice under MiFID \(CESR/09-665\)](#).

International Organization of Securities

Commissions (IOSCO)

Collective investment schemes

In **December 2009**, IOSCO published a [report](#) that presents the results of a wide ranging survey of collective investments schemes (CIS) and the regulation that applied to them in emerging markets between the years 2005 and 2007.

European Parliament

Hedge Funds

On the 2nd December 2009 the European Parliament published a [press release: Hedge funds: ideas for new legislation](#).

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Insurance, reinsurance and pensions

Normative documents

Banking, Finance and Insurance Commission (CBFA)

Pension institutions

On December 8th, the CBFA has published a [statement](#) on the financial situation of pension institutions on December 31th 2009. The purpose of the statement is to put the attention to some actions and measures that have to be taken in the context of the closing of the accounting year 2009 and in the context of the follow-up of the recovery measures of the accounting year 2008. The attachments can be found on [this](#) page.

Additional insurance provisions

On December 16th, the CBFA has published a [circular letter](#) on additional provisions for life- and work-accident insurance.

Financial reporting

On December 16th, the CBFA has published a [circular letter](#) applicable to insurance and reinsurance companies on the quarterly reporting on the financial situation and the solvability margin. The attachments can be found on [this](#) page.

Consultative or informative documents

Comité Européen des Assurances (CEA)

Responses to CEIPOS consultations

In December 2009, CEA has responded to a number of consultations of CEIPOS. They can be found [here](#). It concerns position paper concerning repackage loans investment, extension of the recovery period, partial internal models, supervision of groups centralized risk management, treatment of participations and many more subjects.

Supervisory architecture

On December 12th 2009, CEA has published a [position paper](#) on the reform of the EU supervisory architecture. CEA agrees with the establishment of the European Systemic Risk Board (ESRB) and the European System of Financial Supervisors (ESFS) but also expresses some concerns.

Single Euro Payment Area

On December 14th 2009, CEA has published a [position paper](#) on the applicability of Article 81 of the EC Treaty to multilateral interbank-payments in SEPA Direct Debit.

Committee of European Insurance and Occupational Pensions supervisors (CEIOPS)

Stability report

On December 10th 2009, CEIOPS has published its second bi-annual [report](#) on the financial conditions and financial stability of the insurance and occupational pension fund sector in the EU/EEA. The report covers developments in the (re)insurance and occupational pension fund markets for the periods 2007 and 2008. Furthermore, observations and an outlook for 2009 and beyond are also provided

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