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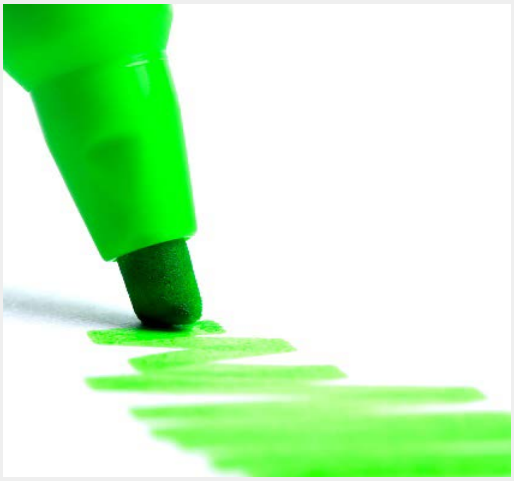
Regulatory Radar

Newsletter on regulation for the financial services industry

Regulatory highlights

Also in this issue:



1. Basel Committee's revised principles in corporate governance principles for banks

On 1 July the Basel Committee on Banking Supervision published guidelines on corporate governance principles for banks revisiting the October 2010 *Principles for enhancing corporate governance*. One of the primary objectives of the revision is to explicitly reinforce the collective oversight and risk governance responsibilities of the board. Another important objective is to emphasise key components of risk governance such as risk culture, risk appetite and their relationship to a bank's risk capacity. The revised guidance also delineates the specific roles of the board, board risk committees, senior management and the

control functions, including the CRO and internal audit. Another key emphasis is put on strengthening banks' overall checks and balances.

2. Final report with guidelines on the application of simplified obligations

On 7 July EBA published its guidelines on the application of simplified obligations under Article 4(5) of Directive 2014/59/EU of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (the BRRD).

Pursuant to Article 4(1) of the BRRD competent authorities and resolution authorities (the authorities) may apply simplified obligations with regard to:

- the contents and details of recovery and resolution plans;
- he date by which the first recovery and resolution plans are to be drawn up and the frequency for updating recovery and resolution plans;
- the contents and details of the information required from institutions; and
- the level of detail for the assessment of resolvability.

The authorities should decide on the level of detail regarding these requirements for each institution having regard to the impact that the failure and subsequent winding up of the institution under normal insolvency proceedings would have on financial markets, on other institutions, on funding conditions, or on the wider economy, taking account of certain criteria. These criteria are the nature of the institution's business, its shareholding structure, its legal form, its risk profile, size and legal status, its interconnectedness with other institutions or to the financial system in general, the scope and the complexity of its activities, its membership of an institutional protection scheme (IPS) or other cooperative mutual solidarity systems and any exercise of investment services or activities.

The present guidelines further specify the above criteria. Amongst others, the guidelines:

- specify the order in which the criteria should be taken into account. Some of the criteria play a distinctive role only in circumstances where the criteria which are the first in order to be assessed (size, interconnectedness, complexity) do not conclude the analysis for the institution concerned in an unambiguous manner;
- clarify that globally systemically important institutions (G-SII) and other systemically important institutions (O-SII) should not be subject to simplified obligations as it is clear that the failure and subsequent winding up under normal insolvency proceedings of such institutions would be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy;
- include a number of mandatory indicators which should be used by the authorities when assessing institutions against the abovementioned criteria. A list of optional indicators is also included.

3. New legal framework for internal control and the internal audit function

On 10 July Regulation of the National Bank of Belgium of 19 May 2015 on internal control and the internal audit function was published in the Official Journal of Belgium. As a principle-based legislation, the Regulation defines the key principles regulated undertakings subject to the prudential supervision of the National Bank of Belgium must adhere to in relation to internal control and their internal audit function. These principles differ from the previous regime in a number of key area, such as the responsibilities of the management body and senior management, the organisation and governance of the internal audit function, the aspects of the organisation to be audited and the outsourcing of the internal audit function.

On 13 July the National Bank of Belgium published Circular NBB_2015_21 on internal control and the internal audit function (in Dutch and in French). The Circular contains detailed guidelines for the implementation of the principles set out in the Regulation of the National Bank of Belgium of 19 May 2015 on internal control and the internal audit function. These guidelines will be used by the National Bank as a benchmark when assessing the functioning and organisation of the internal control and internal audit function of the regulated undertakings subject to its prudential supervision. The Circular replaced the existing circulars in this area (or parts thereof) as of its date of publication.

Circular NBB_2015_21 largely reiterates the key principles set out in the previous circulars on internal control and the internal audit function. This notwithstanding the Circular does introduce an number of changes to and clarifications of the requirements in relation to internal control and intern audit, in particular regarding the organisation of the internal audit function, such as:

- A boarder description of the areas of the organisation that must be assessed, i.e. the quality and effectiveness of the internal control, the risk management and processes and systems for the sound governance of the undertaking).
- Clarification in relation to:
    - the principles with respect to the rotation of internal auditors;
    - the role of internal audit function vis-à-vis the other control functions and requirements in relation to the coordination between the control functions;

    - the type of assurance that must be provided by the internal audit function, i.e. reasonable assurance;
    - the requirements with respect to the auditing of outsourced activities;
    - the organisation of an internal audit function in a group context.
- Introduction of new requirements in relation to:
    - the remuneration of internal auditors, i.e. internal auditors must be remunerated based on the achievement of the objectives of the internal audit function, regardless of the results of the activities being audited and the remuneration must be structured in such a way conflicts of interest are prevented;
    - the conduct and integrity of internal auditors (such as the establishment of Codes of Conduct, the confidentiality of information,…);
    - the outsourcing of the internal audit function;
    - the content, approval and review of the audit charter;
    - the content and approval of the audit plan.
- Increased attention for the relationship between the internal audit function and the management body and the relationship between the internal audit function and the supervisor.

4. Liquidity requirements

On 10 July Regulation of 2 June 2015 of the National Bank of Belgium on the liquidity of credit institutions was published in the Official Journal of Belgium. The Regulation sets out:

- the liquidity coverage requirement in the sense of article 412 of the CRR and Title I of the Delegated Regulation nr. 2015/61 that must be complied by credit institutions governed by Belgian law. Pursuant to Regulation such credit institutions must comply with a liquidity coverage requirement of 100% as of 01/10/2015;
- how the above requirement must be complied with.

5. European Banking Authority (EBA) publishes Guidelines for retail banking products

On 15 July EBA published its Guidelines on product oversights and governance (POG) arrangements for retail banking products. Developments in the markets for financial services in recent years have shown that failures in the conduct of financial institutions towards their customers can cause significant consumer detriment and undermine market confidence, financial stability and the integrity of the financial system. The Guidelines are the EBA's response to increasing risks arising from the misconduct of financial institutions in their interaction with consumers and are part of EBA's work to enhance consumer protection across the EU.

The Guidelines will apply from 3 January 2017. Competent authorities and financial institutions must make every effort to comply with these guidelines.

More information on the Guidelines for retail banking products can be found in our Regulatory Newsflash of 23 July 2015.

6. FSMA issues guidelines for the offering of certain financing instruments

On 29 July the FSMA published Communication FSMA_2015_08 on guidelines in relation to the offering of and provision of services in connection with certain financing instrument by financial institutions to non-professional clients (in Dutch and in French). The Communication:

- is intended to remind financial institutions of the communications of the European Supervisory Authorities in relation to the self-placement of financial instruments with depositors, retail investors and policy holders and the statement of ESMA in relation to potential risks associated with investing in Contingent Convertible Instruments (and in particular the fact that such products are not appropriate for retail clients);
- to provide guidelines with respect to the offering of the following products:
    - contingent Convertible Instruments;
    - subordinated bonds that are part of the own funds of financial institutions;
    - capital instruments of credit institutions and investment firms that are exposed to the risk of a bail-in.

7. European Commission adopts a delegated regulation on central clearing for interest rate derivatives

On 6 August the European Commission adopted a delegated act supplementing the Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation, that makes it mandatory for certain over-the-counter (OTC) interest rate derivative contracts to be cleared through central counterparties.

The act lays down the classes of the OTC interest rate derivatives that are subject to the clearing obligation and four different categories of counterparties for which different phase-in periods apply. It also sets out the minimum remaining maturities for the purposes of the frontloading requirement as well as the dates on which the frontloading should start.

8. FSMA amends the AssurMiFID Circular

On 1 September, the FSMA published Circular FSMA_2015_14 modifying Circular FSMA_2014_02 of 16 April 2014 on the amendment of the Law of 27 March 1995 and the extension of the MiFID conduct of business rules to the insurance sector (the "AssurMiFID Circular") (in Dutch and in French). It recasts Circular FSMA_2014_02 and replaces it.

Changes introduced by the Circular include:

- the introduction of detailed recordkeeping requirements;
- the modification of the legal references to reflect the adoption of the Law of 4 April 2014 on insurance;
- a change of the date of application of the conduct of business rules to 1 May 2015 to comply with the judgment of the Constitutional Court this regard.

Financial Services Industry

Also in this issue:

Normative documents

National Bank of Belgium

Recovery plans

On 23 July the National Bank of Belgium published Communication NBB_2015_22 on specific guidelines in relation to recovery plans (in Dutch and in French). The Communication contains detailed guidelines on how credit institutions with a Central Securities Depository authorization, institutions equivalent to settlement institutions and Central Securities Depositories must draft their recovery plans. It also sets out the reporting obligations, reporting timeframes and the templates that must be used to draft the recovery plans.

Consultative or informative documents

Basel Committee on Banking Supervision (BCBS)

Criteria for identifying simple, transparent and comparable securitizations

On 23 July the Basel Committee on Banking Supervision together the International Organization of Securities Commissions (IOSCO) published criteria for identifying simple, transparent and comparable securitizations. The purpose of these criteria is to assist in the financial industry's development of simple, transparent and comparable securitisation structures. They are not intended to serve as a substitute for investors' due diligence. The criteria apply only to term securitisations and are non-

exhaustive and non-binding. Additional and/or more detailed criteria may be necessary based on specific needs and applications.

Bank for International Settlements (BIS)

Code of conduct standards and principles in foreign exchange markets

In a press release of 24 July, the Bank for International Settlements announced that its Foreign Exchange Working Group has commenced work. The main objectives of the FXWG's work are to facilitate the establishment of a single global code of conduct standards and principles and to promote greater adherence to these standards and principles. The Code is intended to cover all parts of the global wholesale FX market, with appropriate consideration to local circumstances.

European Banking Authority (EBA)

European framework for qualifying securitization

On 7 July EBA published its opinion on a European framework for qualifying securitization. The opinion contains a number of recommendations of the EBA on several aspects related to the establishment of a European framework for qualifying securitization:

- recommendation for a holistic (cross-product and sector) review of the regulatory framework for securitizations and other investment products. Following the review, action should be taken where appropriate;
- recommendation to create a framework for 'qualifying' securitizations following a two-stage approach: 1) Identification of simple, standard and transparent securitizations (SST) and 2) SST "qualifying" for lower capital requirements.
- recommendation on criteria defining "qualifying" term securitizations;
- recommendation on criteria defining "qualifying" Asset-Backed Commercial Paper securitizations; and
- recommendation on the re-calibration of the BCBS 2014 framework applicable to "qualifying" securitization positions.

The "Report on qualifying securitization" accompanying the opinion, develops the analysis which was carried out and which resulted in the different recommendations.

Guidelines on passport notifications for credit intermediaries under the Mortgage Credit Directive

On 11 August the EBA published guidelines on passport notifications for credit intermediaries under the Mortgage Credit Directive. The guidelines:

- set out the information that must be contained in the passport notifications that must be made by the home Member States in relation to credit intermediaries intending to carry out business in another Member State and the manner in which these notifications need to be made;
- specifies the requirements to update the public register for credit intermediaries related to the passport notification.

European Central Bank (ECB)

General Documentation on monetary policy implementation

On 31 August the ECB published Guideline (ECB/2015/27) amending the General Documentation (GD) on the implementation of the Eurosystem's monetary policy. The Guideline introduces some changes to the monetary policy implementation framework. First, the provisions on counterparty eligibility have been revised in light of recent legislative developments in the implementation of the Banking Union. In particular, the provisions now state that the Eurosystem may take into account in its eligibility assessment information on capital, leverage and liquidity ratios of individual institutions. Second, a new class of eligible assets, namely the "*non-marketable debt instruments backed by eligible credit claims (DECCs)*", has been introduced in the Eurosystem collateral framework.

European Securities and Markets Authority (ESMA)

Extension of the scope of interoperability arrangements between EU CCPs

On 1 July ESMA published a report on the extension of the scope of interoperability arrangements between Central Counterparties. An interoperability arrangement as an arrangement between two or more CCPs that involves a cross-system execution of transactions. Under EMIR the scope of interoperability arrangements is currently restricted to transferable securities and money-market instruments. The Regulation does however require ESMA to analyse a possible extension of the scope of interoperability arrangements to transactions in classes of financial instruments other than transferable securities and money-market instruments. This analysis is set out in the present report. Based on this analysis, ESMA concludes that extending the EMIR provision related to interoperability arrangements to Exchange Traded Derivatives is advisable. A further extension to OTC Derivatives should be assessed at a later stage.

Penalties for settlement fails and the substantial importance of a CSD

On 4 August ESMA issued its final technical advice under the CSD Regulation in relation to penalties for settlement fails and the substantial importance of a CSD. With respect to the penalties for settlement fails, the advice contains recommendations of ESMA in relation to the parameters for calculating the basic cash penalty, the increase or reduction of the basic amount of the penalty and the parameters for the calculation of cash penalties in the context of chains of interdependent transactions. In relation to the substantial importance of a CSD, the advice contains possible indicators for assessing whether the provision of three core CSD services (notary service, central maintenance service and settlement service) in a host Member State could be considered of substantial importance for the functioning of the securities markets and the protection of the investors" in the host Member State.

EMIR Review

In 13 August ESMA published four reports focused on how the European Markets Infrastructure Regulation (EMIR) framework has been functioning and providing input and recommendations to the European Commission's EMIR Review.

- A review on the use of OTC derivatives by non-financial counterparties.
- A review on the efficiency of margining requirements to limit procyclicality.
- The segregation and probability requirements.
- ESMA input as part of the Commission consultation on the EMIR Review.

Waiver from pre-trade transparency

In 26 August ESMA published an updated version of its compilation of CESR positions and ESMA opinions in relation to pre-trade transparency waivers for operators of regulated markets and MTFs. The updated document contains an example of a trading system with functionalities that satisfy the criteria for different waivers.

Review of minimum liquidation period for financial instruments other than OTC derivatives

On 26 August ESMA published a discussion paper on the review of Article 26 of RTS No 153/2013 with respect to client accounts. In the context of the debate on the equivalence between the legal and supervisory arrangements for CCPs in the United States of America and the EU, it emerged that a critical between the two regime is that for US CCPs the minimum liquidation period to be used for the calculation of margins for financial instruments other than OTC derivatives is only one day, although applied for client accounts on a gross basis, whereas under EMIR the minimum liquidation period is two days, but margin may be provided on a net basis. This difference between the USA and EU gives rise to a risk of regulatory arbitrage. Given the aforementioned, ESMA has decided to launch a review to investigate whether it would be appropriate to revise the current regulatory standard in order to allow CCPs to apply a one-day liquidation period for financial instruments other than OTC derivatives, only where margins on client accounts are calculated on a gross basis. In this context the present discussion paper is seeking views on the time horizon for liquidation and other issues related to a possible change of the liquidation period.

Comments on the discussion paper can be submitted until 30 September 2015.

MiFID II Technical Standards

On 31 August ESMA published a consultation paper on draft Implementing Technical Standards under MiFID II. The consultation paper seeks views on the following three draft Implementing Technical Standards (ITS):

- ITS on the suspension and removal of financial instruments from trading on a trading venue. This draft ITS covers the timing and format of publications and communications foreseen by MiFID II in case a suspension or removal of an instrument occurs ITS on standard forms, templates and procedures for the notification and provision of information for data reporting services providers (DRSPs). This draft ITS covers both the application for authorisation by DRSP applicants as well as the notification of members of the management body of a DRSP and of any changes to its membership.
- ITS on the weekly aggregated position reports for commodity derivatives, emission allowances and derivatives thereof.

Comments on the consultation paper must be submitted by 31 October 2015.

Financial Action Task Force (FATF)

Money laundering and terrorist financing risks and vulnerabilities associated with gold

On 20 July the FATF published a report on money laundering and terrorist financing risks and vulnerabilities associated with gold. The report:

- identifies the features of gold that make it attractive to criminal organisations as a mechanism to move value. In this regard the report found that gold is an extremely attractive vehicle for laundering money as it provides a mechanism for organised crime groups to convert illicit cash into a stable, anonymous, transformable and easily exchangeable asset to realise or reinvest the profits of their criminal activities;

- maps the nature, source and scope of gold production, markets and trade, to assist practitioners to recognise the common predicate offences (such as theft, smuggling, fraud, illegal schemes and tax evasion) that occur in the gold market;
- sets out a library of 'red flag' indicators that could assist designated non-financial businesses and professions (DNFBPs), financial institutions and others in identifying and reporting suspicious activities associated with ML and TF in the gold sector.

Financial Services and Markets Authority (FSMA)

Entry into force of the Book VII "Payment- and credit services" of the Code Economic Law

In 17 July the FSMA published Communication FSMA_2015_07 to authorized and registered mortgage credit companies (in Dutch and in French) with a view of informing these companies about the consequences of the (partially) entry into force of Book VII "Payment- and credit services" of the Code of Economic Law on 1 April 2015. This new legislation replaces the Law of 4 August 1992 on mortgages.

In the Communication, the FSMA elaborates on the changes the new legislation will bring about in the following areas:

- the modalities of mortgages, the content of mortgage agreements, advertising and costs: In the Communication, the FSMA indicates that the requirements in this area remain unchanged;
- approval of documents: As of 1 November 2015 changes to the Articles of Associations of mortgage credit companies and model documents (such as the prospectus, the mortgage request form,…) will no longer need to be approved by the FSMA. Changes to model contracts;
- access to the activity of creditor and credit intermediary: Book VII "Payment- and credit services" introduced a new regime for access to the activity of creditor and credit intermediary. This new regime will enter into force on 1 November 2015. As the new regime does not foresee in any grandfathering, mortgage credit companies are required to request re-authorization under the new regime. More information on the new regime can be found here (in Dutch and in French);
- transfer of accounts receivable secured with mortgage, a right to obtain a mortgage or a privilege on immovable property: Pursuant to article 81undecries of the Mortgage Act), a transfer of accounts receivable by a creditor in connection with a merger, acquisition or split or in the context of the (partial) contribution or sale of a mortgage activity can be made opposable to third parties by having the transfer published in the Official Journal of Belgium via the FSMA. In the Communication it is indicated that when this option is chosen, a file on the merger, acquisition, split or the (partial) contribution or sale of a mortgage activity must be submitted to the FSMA.

Regular updating of professional knowledge

On 25 August FSMA published the following four Communications on regular updating of professional knowledge.

- Communication FSMA_2015_09 to insurance and reinsurance intermediaries regarding regular updating of professional knowledge (in Dutch and in French)
- Communication FSMA_2015_10 to intermediaries in banking and investment services regarding regular updating of professional knowledge (in Dutch and in French)
- Communication FSMA_2015_11 to persons wishing to be accredited as training providers in insurance and reinsurance (in Dutch and in French)
- Communication FSMA_2015_12 to persons wishing to be accredited as training providers in banking and investment services (in Dutch and in French)

The purpose of this Communications is to give further clarification on the applicable rules concerning the legal requirement of regular skill training of professional knowledge.

International Organization of Securities Commissions (IOSCO)

First "Level 3" PFMI Principles assessment

In a press release of 9 July the IOSCO and the Committee on Payments and Markets Infrastructure announced that they have started the first Level 3 assessment of the implementation of the Principles for financial market infrastructures (PFMI), the international standards for financial market infrastructures (FMIs). This review will examine consistency in the outcomes of PFMI Principles implementation and is part of the CPMI-IOSCO's monitoring of full, timely and consistent implementation of the PFMI. The review will focus on a subset of requirements under the PFMI that relate to financial risk management by central counterparties (CCPs) including certain practices related to governance, stress-testing, margin, liquidity, collateral, and recovery. This first review will consider outcomes achieved in this area by examining a number of globally- and locally-active CCPs that clear derivative products (both exchange traded and over-the-counter (OTC).

Implementation of the Regulation of Derivative Market Intermediaries (DMI)

On 29 July IOSCO published the results of its thematic review of the implementation of IOSCO's International Standards for Derivative Market Intermediary Regulation Derivative Market Intermediaries ("DMI").I. The Standards are for the regulation of market participants that are in the business of dealing, making a market or intermediating transactions in over-the-counter (OTC) derivatives. In general, the review found that participating jurisdictions have made significant progress in adopting legislation, regulation or policy in the areas covered by the Standards.

Implementation of the requirements in relation to the Timeliness and Frequency of Disclosure to Investors

On 30 July IOSCO published the results of its thematic review of the implementation of the requirements in relation to the Timeliness and Frequency of Disclosure to Investors set out in Principles 16 (disclosure by issuers) and 26 (disclosure by collective investment schemes) of IOSCO's Objectives and Principles of Securities Regulation:

- in relation to disclosure under Principle 16, the review found differences around whether and when information is required to be disclosed. Requirements varied according to the type of issuer and the type of information;
- in relation to disclosure under Principle 26, the review found that timely disclosure requirements on value, risk reward profile and costs of CIS were in place for all jurisdictions. This is achieved mostly through updates to prospectuses or other offering documents. Information is given as soon as significant changes occur that may affect the valuation of a CIS or that can influence an investor's decision to either subscribe or redeem CIS units or shares.

Post-trade transparency in the credit default swaps (CDS) market

On 7 August the IOSCO issued a report on post-trade transparency in the credit default swaps (CDS) market. The report analyses the potential impact of mandatory post-trade transparency in the CDS market. During this analysis, the IOSCO identified certain potential benefits and costs to mandatory post-trade transparency. In consideration of these potential costs and benefits, IOSCO believes that greater post-trade transparency in the CDS market—including making the price and volume of individual transactions publicly available—would be valuable to market participants and other market observers .As such, it encourages each member jurisdiction to take steps toward enhancing post-trade transparency in the CDS market in its jurisdiction, while recognizing that each member jurisdiction is best placed to judge the appropriate time and manner for enhancing post-trade transparency for CDS that trade in its respective market.

Harmonisation of the Unique Transaction Identifier (UTI)

On 19 August IOSCO together with the Committee on Payments and Markets Infrastructure published on consultation paper on the harmonisation of the Unique Transaction Identifier (UTI). The role of the UTI is to uniquely identify each OTC derivatives transaction required by authorities to be reported to Trade Repositories (TRs)
The paper sets outs:

- the key characteristics of UTIs that have been identified by the competent authorities;
- proposals and options for UTIs to meet the identified key characteristics;
- possible approaches to the structure and format of UTIs; and
- the implementation issues associated with the various proposals and options.

Comments on the consultation paper must be submitted by 30 September 2015.

Joint Committee of the European Supervisory Authorities

Prudential assessment of acquisitions and increases of qualifying holdings in the financial sector

On 3 July the Joint Committee of European Supervisory Authorities published a joint consultation paper on the guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector. With a view of providing legal certainty, clarity and predictability with regard to the assessment process contemplated in the sectoral Directives and Regulations that must be performed in case of acquisitions by natural or legal persons of a qualifying holding in a credit institution, assurance, insurance or re-insurance undertaking or an investment firm, the proposed guidelines aim to:

- harmonise the conditions under which the proposed acquirer of a holding in a financial institution is required to notify its decision to the competent authority responsible for the prudential supervision of the target undertaking;
- define a clear and transparent procedure for the prudential assessment by the competent authorities of the proposed acquisition or increase of a qualifying holding, including setting the maximum period of time for completing the process;
- specify clear criteria of a strictly prudential nature to be applied by the competent authorities in the assessment process; and
- ensure that the proposed acquirer knows what information it will be required to provide to the competent authorities in order to allow them to assess the proposed acquisition in a complete and timely manner by means of detailed information lists.

Credit institutions and investment firms

Also in this issue:

Normative documents

Official Journal of the European Union

Supervisory reporting

On 31 July Commission Implementing Regulation (EU) 2015/1278 of 9 July 2015 amending Implementing Regulation (EU) No 680/2014 laying down implementing technical standards with regard to supervisory reporting of institutions as regards instructions, templates and definitions was published in the Official Journal of the European Union. Commission Implementing Regulation (EU) No 680/2014 specifies the requirements according to which institutions are required to report information relevant to their compliance with the Capital Requirements Regulation ("CCR"). Given that the regulatory framework established by CCR is gradually being supplemented and amended in its non-essential elements by the adoption of regulatory technical standards, Implementing Regulation (EU) No 680/2014 needs to be updated accordingly to reflect those rules; to provide further precision in the instructions and definitions used for the purposes of institutions' supervisory reporting. As such the present Implementing Regulation modifies Implementing Regulation (EU) No 680/2014 by replacing several templates of Annexes I, III and IV and amending some of the instructions laid down in Annexes II, V, IX and XVII. The changes are not significant in substantive terms.

National Bank of Belgium (NBB)

Own funds requirements for less significant credit institutions

On 30 July NBB published Circular NBB_2015_23 on own funds requirements for less significant credit institutions (in Dutch and in French). The Circular contains clarifications on the requirements concerning own funds such as the acknowledgement of the interim results, the payment of dividends, the permission to reduce own funds, preliminary notification of the issuance of supplementary Tier-1 and Tier-2 instruments.

Consultative or informative documents

Basel Committee on Banking Supervision (BCBS)

Review of the Credit Valuation Adjustment Risk Framework

On 1 July the Basel Committee on Banking Supervision published a consultation paper on its Review of the Credit Valuation Adjustment Risk Framework. The paper presents a proposed revision of the Credit Valuation Adjustment (CVA) framework set out in the current Basel III capital standards for the treatment of counterparty credit risk.

Comments on the consultation paper can be submitted until 1 October 2015.

Basel III leverage ratio framework

On 7 July the Basel Committee on Banking Supervision (BCBS) published an updated version of its FAQ on the Basel III leverage ratio framework. The updated document contains the following new FAQs:

- How should securities financing transactions (“SFTs”) with no explicit end date but which can be unwound at any time by any counterparty be treated?
- The Basel III leverage ratio framework refers to the “final contractual exposure” as a replacement for “gross SFT assets recognised for accounting purposes” for SFT assets cleared through qualifying central counterparties (QCCPs). Could you please define “final contractual exposure”?
- How should long settlement transactions (LSTs) and failed trades be treated in the Basel III leverage ratio?

Standardised approach for measuring counterparty credit risk exposures

On 19 August the Basel Committee on Banking Supervision (BCBS) published a FAQ document on the Standardised Approach for measuring counterparty credit exposures. The FAQ provides answers on the capping of margined exposure at default, potential future exposure add-ons, and derivatives issues.

Basel III monitoring exercise

In August the Basel Committee on Banking Supervision (BCBS) updated a series of documents in relation to its Basel III monitoring exercise, with the aim of facilitating the collection of June 2015 data. Updates include new FAQs on its impact study on the proposed frameworks for market risk and CVA risk, instructions for completing the reporting templates, a qualitative questionnaire for interest rate risk in the banking book and the monitoring workbook.

European Banking Authority (EBA)

Derogations for currencies with constraints on the availability of liquid assets

On 3 July the EBA published its opinion on the Commission intention to amend draft Regulatory Technical Standards specifying the derogations concerning currencies with constraints on the availability of liquid assets according to Article 419(5) CRR. In its Opinion, EBA indicates its approval with removing from its RTS the minimum 15% haircut to the value of the collateral posted by an institution with a central bank in order to obtain a credit line. It also supports the Commission's other proposed amendments, which provide added detail and further legal certainty on the necessary conditions for the application of the derogations. EBA has amended the RTS on the basis of the Commission's proposed amendments and resubmitted the RTS in the form of a formal Opinion.

Processes for notifying that a banking institution is failing

On 3 July the EBA published its Final draft Regulatory Technical Standards on procedures and contents of notifications referred to in Article 81(1), (2) and (3) and the notice of suspension referred to in Article 83 of Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms ("BRRD"). The draft RTS addresses three distinct notifications that must be provided in the context of the BRRD:

- the management body of an entity should duly notify the competent authority if they consider the entity to be failing or likely to fail;
- the competent authority should in turn inform the resolution authorities of any notification received from an entity as well as of any measures that the competent authority requires the entity to take pursuant to Article 104 of Directive 2013/36/EU;
- the relevant authorities identified in Article 81(3) of the BRRD should receive communication from the competent authority or the resolution authority, as the case may be, that an institution or an entity is failing or likely to fail and that there is no reasonable prospect that any alternative private measure or supervisory action would prevent the failure of the institution or the entity within a reasonable timeframe.

In addition, the draft RTS set out the procedures and the content of the notice summarising the effects of the resolution action, including the decision to suspend or restrict the exercise of certain rights.

Operational functioning of the resolution colleges

On 3 July the EBA also published its Final draft Regulatory Technical Standards on resolution colleges under Article 88(7) of Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms ("BRRD"). Article 88(7) of the BRRD mandates EBA with the development of draft regulatory technical standards (RTS) to specify the operational functioning of the resolution colleges that are to be established for EEA cross-border banking groups. The draft RTS contains requirements covering the following areas:

- operational organisation of resolution colleges;
- resolution planning joint decisions; and
- cross-border group resolution.

Criteria for determining the minimum requirement for own funds and eligible liabilities (MREL)

On the 3 July the EBA published its Final Draft Regulatory Technical Standards on criteria for determining the minimum requirement for own funds and eligible liabilities under Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms ("BRRD"). To avoid institutions structuring their liabilities in a way that impedes the effectiveness of the bail-in or other resolution tools, and to avoid the risk of contagion or a bank run, the BRRD requires that institutions meet at all times a robust minimum requirement for own funds and eligible liabilities (MREL). The present technical standards further specify these minimum criteria in order to achieve an appropriate degree of convergence in how they are applied and interpreted across Member States, and ensure that similar levels of MREL are set for institutions with similar risk profiles, resolvability, and other characteristics regardless of their domicile.

Contractual recognition of write-down and conversion powers

On 3 July, the EBA published its Final report on Draft Regulatory Technical Standards on the contractual recognition of write-down and conversion powers under Article 55(3) of Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms ("BRRD"). Pursuant to Article 55(1) of the BRRD Member States must require institutions and certain entities to include a contractual term by which the creditor or the party to the agreement creating a relevant liability recognises that liability may be subject to the write-down and conversion powers and agrees to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of those powers by a resolution authority. Article 55(1) of the BRRD specifies the list of liabilities which are excluded from the requirement to include the contractual term. The draft RTS further determines the list of liabilities to which the exclusion from the requirement to include the contractual term applies and specifies a list of mandatory components which must be present in the contractual term.

Capital requirements for mortgage exposures

On 6 July the EBA published a consultation paper on Draft Regulatory Technical Standards on the conditions that competent authorities shall take into account when determining higher risk-weights, in particular the term of "financial stability considerations" and the conditions that competent authorities shall take into account when determining higher minimum LGD values. The draft regulatory technical standards contained in the consultation paper:

- the conditions that competent authorities must take into account when determining higher risk weights for exposures secured by immovable property under the Standardised Approach (SA) (Article 124(4)(b) CRR);
- conditions that competent authorities must l take into account when increasing the minimum exposure weighted loss given default (LGD) for retail exposures secured by residential or commercial immovable property under the Internal Ratings Based (IRB) approach (Article 164(6) CRR).

Comments on the consultation paper must be submitted by 6 October 2015.

Independent valuers

On 6 July, the EBA published its Final report on Draft Regulatory Technical Standards on independent valuers under Article 36(14) of Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms ("BRRD"). The draft RTS set out general criteria which must be used to determine whether a person complies with the legal requirement of independence.

Simplified obligations in relation recovery and resolution plans

On 7 July the EBA published its Final report on Draft Implementing Technical Standards on the uniform formats, templates and definitions for the identification and transmission of information by competent authorities and resolution authorities to the EBA for the purposes of Article 4(7) of Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms ("BRRD"). The present ITS contains three reporting templates which must be used by national competent authorities provide EBA with information about the granting of waivers and application of simplified obligations in relation to recovery and resolution plans.

Provision of information for resolution plans

On 7 July EBA published its Final report on Draft Implementing technical standards on procedures, forms and templates for the provision of information for resolution plans under Article 11(3) of Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms ("BRRD"). These draft ITS set out a procedure that will apply where resolution authorities require information about an institution in order to draw up a resolution plan.

Conditions for Group financial support

On 9 July the EBA published its Final draft Regulatory Technical Standards and guidelines specifying the conditions for group financial support under Article 23 of Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms ("BRRD"). Article 23(1) of the BRRD sets out various conditions which must be fulfilled to permit a parent institution, a Union parent institution and certain other entities in

a group and their subsidiaries in other Member States or third countries that are institutions or financial institutions, on the basis of a group financial support agreement falling under Chapter III of that Directive, to provide financial support in the form of a loan, of provision of guarantees or of assets for use as collateral to another group entity that meets the conditions for early intervention.

Disclosure of financial support agreements

On 9 July EBA published its Final draft Implementing Technical Standards on the form and content of disclosure of financial support agreements under Article 26 of Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms ("BRRD"). Chapter III of the BRRD aims to enable cross-border groups to allocate liquidity optimally when the group is in financial distress, on the basis of dedicated financial support agreements. As one important safeguard for groups' shareholders and creditors, the BRRD requires the disclosure of the general terms of a support agreement. The present ITS specify the form and content of this disclosure. Pursuant to the ITS, the disclosure should be made on the institution's website and include relevant information such as the consideration and repayment modalities while respecting the need for confidentiality of more specific information.

Range of practices regarding macroprudential policy measures

On 11 July the EBA published a report on the range of practices regarding macroprudential policy measures. The objective of the report is to take stock of the range of practices applied by EU Member States in relation to the provisions for macroprudential policies set out in the Capital Requirements Regulation and Directive (CRR/CRD IV), focusing on the interaction of macroprudential and microprudential objectives and tools. As such, the report gathers and analyses the notifications received by the EBA regarding the application by EU Member States of a number of macro-prudential tools in the first five quarters following the implementation of the CRR/CRD IV.

Non-delta risk of options in the standardised market risk approach and identified staff

On 16 July the EBA published its Final Draft Regulatory Technical Standards correcting Delegated Regulation (EU) No 528/2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for non-delta risk of options in the standardized market risk approach and correcting Delegated Regulation (EU) No 604/2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile. The purpose of the present RTS is to amend the text of the aforementioned delegated acts in order to correct changes were inadvertently introduced by the Commission during the legal adoption process and that altered the meaning of the technical standards.

Additional liquidity monitoring metrics

In a press release of 17 July the EBA announced that it has modified the application date of its final draft Implementing Technical Standards (ITS) on additional liquidity monitoring metrics. The EBA had originally submitted its final draft ITS on additional liquidity monitoring metrics to the European Commission in December 2013, with a proposed application date of 1 July 2015. Considering that the European Commission has not yet adopted the final draft ITS, it is highly likely that the application date, which will be specified once the ITS are published in the EU Official Journal, will be postponed by at least three months. The final application date will depend on the timeline of adoption of the ITS by the European Commission.

Exclusion of transactions with non-financial counterparties (NFC) established in a third country from the own funds requirement for Credit Valuation Adjustment (CVA)

On 5 August the EBA published a Consultation paper on Draft Regulatory Technical Standards on the procedures for excluding transactions with non-financial counterparties (NFC) established in a third country from the own funds requirement for Credit Valuation Adjustment (CVA) risk under Article 382(5) of Regulation (EU) No 575/2013. The consultation paper contains draft Technical Standards specifying the due diligence measures that institutions will need to implement with a view of determining whether transactions with non-financial counterparties established in third countries can be excluded from the own funds requirement for Credit Valuation Adjustment.
Comments on the consultation paper can be submitted until 5 November 2015.

Classes of arrangements to be protected in a partial property transfer

On 14 August the EBA published a technical advice on classes of arrangements to be protected in a partial property transfer. The Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms ("BRRD") requires that in case of a partial property transfer by a resolution authority appropriate protection is afforded to six general categories of arrangements (i.e. security arrangements, title transfer collateral arrangements, set-off arrangements, netting arrangements, covered bonds and structured finance arrangements) and the counterparties to these arrangements. As these categories are quite broad, the scope needs to be further specified, and the Commission is empowered to do so in its delegated acts. The Commission has requested the EBA to provide an opinion with technical advice on this mandate.

Net Stable Funding Requirements and Leverage Ratio

In a press release of 19 August, the EBA announced:

- it has been requested by the European Commission to conduct further analysis on proportionality, the scope of application and impact on markets of the calibration of Net Stable Funding Requirements (NSFR) and Leverage Ratio (LR). The analysis on proportionality will be based on an assessment of the impact of the requirements on banks with different business models and will also specifically aim to cover potential future reporting requirements. The EBA will try to incorporate these aspects into its NSFR and LR calibration reports to the maximum extent possible and taking into account constraints in data availability;
- the delivery date for the calibration report on the LR is likely to be advanced to July 2016. The calibration report on NSFR will in principle be delivered by the end of 2015.

European Commission

Rules governing the levels of application of banking prudential requirement

On 5 August the European Commission published a report on the rules governing the levels of application of banking prudential requirement. The supervision of a banking group which is composed of several credit institutions or investment firms (hereafter 'institutions') is carried out at two levels, the level of the entire banking group and the level of each institution of the group. The first level corresponds to the supervision on a consolidated basis and the second level corresponds to the supervision on an individual basis. However, this dual supervision principle is subject to a number of exceptions. Based on this report made by the EBA, it deems that it is not suitable to propose any amendments to the current exemption rules. The Commission concludes in the wake of the report, that it needs to continue to reflect further on whether and how these exceptions and conditions for their application should be maintained. Some of these considerations will be particularly apposite in the context of SSM. Moreover, since some rules are new or have not been used extensively yet, experience in their application must still be gained so that it could carefully assess the feasibility of amending the existing rules.

Investment products and asset management

Also in this issue:

Normative documents

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Consultative or informative documents

European Securities and Markets Authority (ESMA)

Q&A on the application of the AIFMD

On 21 July ESMA published an update of the questions and answers on the application of the Alternative Investment Fund Managers Directive (AIFMD). The Q&A includes updated and new questions and answers on reporting to national authorities and the calculation of the total value of AUM in order to promote common supervisory approaches and practices in the application of the AIFMD and its implementing measures. It is rather meant to give a clarification than to create an extra layer of requirements.

Sound remuneration policies under UCITS V and AIFMD

On 23 July ESMA published a consultation paper on proposed Guidelines on sound remuneration policies under the UCITS V Directive and AIFMD. The consultation paper:

- sets out ESMA's formal proposals for the guidelines on remuneration policies required by the UCITS V Directive covering areas such as scope, proportionality, governance of remuneration, requirement on risk alignment and disclosure; and
- proposes a targeted revision of the Guidelines on sound remuneration policies under the AIFMD to clarify the application of the guidelines in case an AIFM is part of group.

Comments on the consultation paper can be submitted until 23 October 2015.

Draft Regulatory Technical Standards under the European Long Term Investment Funds (ELTIF) Regulation

On 31 July ESMA published a consultation paper on draft Regulatory Technical Standards under Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds ("ELTIF Regulation").
The proposed draft Regulatory Standards set out:

- the criteria for establishing the circumstances in which the use of financial derivative instruments solely serves hedging purposes and as such is permissible under the ELTIF Regulation;
- the circumstances in which the life of an ELTIF is considered sufficient in length;
- the criteria to be used for certain elements of the itemised schedule that must be adopted for the orderly disposal of the ELTIF assets;
- the costs disclosure; and
- the facilities available to retail investors for making subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units or shares and making available the information which the ELTIF and the manager of the ELTIF are required to provide.

Comments on the consultation paper must be submitted by 14 October 2015.

Insurance, reinsurance and pensions

Also in this issue:

Normative documents

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Consultative or informative documents

Financial Service and Markets Authority (FSMA)

Essential elements of an insurance contract

On 26 August the FSMA published Communication FSMA_2015_13 setting out its point of view on the essential elements of an insurance contract (in Dutch and in French). The purpose of the Communication is to clarify:

- the distinction between a guarantee contract and an insurance contract; and
- that new definition of “insurer” in the Law of 4 April 2014 on insurance will not cause the reclassification of certain derivative contracts as insurance contracts as derivative contracts in principle lack an interest that is being insured.

Data Protection

Also in this issue:

Deloitte Privacy Newsflash

The Deloitte Privacy Newsflash is a newsletter that is being developed on a bi- monthly basis by the Deloitte Belgium Security and Privacy team, part of the Enterprise Risk Services business unit. In this regulatory radar, every two months, we include a reference to the latest issue of this newsflash, together with a list of the topics treated in that newsflash.

Highlights of the September Issue:

- EU-US agreement signed; Data protection law enforcement “umbrella agreement” guarantees EU and US citizens same right of judicial redress for breaches
- Latest news on the EU Data Protection Reform
- Latest news on Russian Data Localisation Law
- FTC acquires authority to sue companies with inadequate data protection measures
- Google declines to comply with CNIL’s (French DPA) request to apply the ‘right to be forgotten’ globally
- UK DPA approves BCR for CA Technologies
- German DPA (Hamburg) – Facebook
- Recent breaches and enforcement actions
- Deloitte & privacy recent “wins”
- Forthcoming interesting events

We are always interested in your feedback. Please let us know what you think of this newsletter and send your comments to Regulatory Radar. Visit our website here.

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