

# BULLETIN | EU FINANCIAL SERVICES AND REGULATION

March 2014

Welcome to the EU edition of the Financial Services and Regulation Bulletin, featuring a full round-up of the main regulatory and legislative developments in the financial services sector over the past month.

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## PROGRESS OF LEGISLATIVE PROPOSALS

### 1. PROSPECTUS DIRECTIVE: DRAFT OF EUROPEAN COMMISSION DELEGATED REGULATION ON SUPPLEMENTARY PROSPECTUSES PUBLISHED

On March 7 2014 the Commission published a [draft delegated regulation](#) outlining regulatory technical standards (RTS) for the publication of supplementary prospectuses. The draft follows the publication of the European Securities and Markets Authority (ESMA) [final report](#) – adopted in December 2013 – outlining situations which require the publication of a supplementary prospectus. The Commission will now pass the draft to the European Parliament and the EU Council for their consideration. If the Council or the Parliament do not object, the draft will be published in the EU's Official Journal (OJ) and is expected to enter into force on the twentieth day following its publication.

### 2. EUROPEAN PARLIAMENT POSTPONES VOTE ON PROPOSED BENCHMARK REGULATION UNTIL AFTER MAY 2014 ELECTIONS

On 7 March 2014, the press [reported](#) that the European Parliament had postponed its vote on the proposed the Benchmark Regulation following disagreement regarding the inclusion of commodities within the scope of the Benchmark Regulation. Consequently, the vote will take place following the parliamentary elections in May 2014.

The draft regulation sets out how benchmarks for the financial markets as well as commodities should be compiled, audited, governed and supervised. It draws heavily on reforms that Britain has already introduced for LIBOR.

### 3. EU COUNCIL PUBLISHES A PROPOSED RECAST OF DGSD

On 7 March 2014, the EU Council published the [text](#) – adopted on 3 March 2014 – of the proposed Directive recasting the Deposit Guarantee Schemes Directive (DGSD) and aimed at improving the protection of depositors' savings by (i) the simplification of pay-out arrangements and (ii) reduction of the time limit for paying out depositors from the current 20 working days to 7 working days by 2024.

The European Parliament is expected to adopt the final text of the recast DGSD without amendment at second reading, which is expected at its plenary session between 14 and 17 April 2014.

### 4. EUROPEAN PARLIAMENT VOTES IN PLENARY TO ADOPT OMNIBUS II

On 11 March 2014, the European Parliament [adopted](#) the Omnibus II Directive at its plenary session. The adoption of Omnibus II completes the Solvency II Directive and finalises the new EU framework for insurance regulation and supervision. Omnibus II will now need to be formally adopted by the EU Council, and published in the EU's OJ. It will enter into force the day after its publication in the OJ.

In parallel, the European Commission is preparing the next stage of the Solvency II implementation, including the adoption of a Commission Delegated Act – containing a large number of detailed implementing rules – planned for summer 2014. Separately, the European Insurance and Occupational Pensions Authority (EIOPA) is working on a package of implementing technical standards (ITS) with the aim of implementing Solvency II as of 1 January 2016.

## 5. ESMA DISCUSSION PAPER ON DRAFT TECHNICAL STANDARDS FOR CSDR

On 20 March 2014, ESMA published a discussion paper on draft technical standards for the proposed Regulation on improving securities settlement and on central securities depositories (CSDR).

The discussion paper seeks stakeholders' views on the possible contents of most of the RTS and the ITS that ESMA is required to draft under the CSDR. ESMA is also required to draft a number of standards on supervisory issues, such as relevance of certain currencies and consultation of relevant authorities and co-operation between regulators on CSDs that are substantially important cross-border. ESMA will consider all the comments received by 22 May 2014.

## 6. EU COUNCIL APPROVES POLITICAL AGREEMENT ON THE SRM REGULATION

On 27 March 2014, the EU Council's Permanent Representatives Committee (COREPER) approved the political agreement with the European Parliament on the proposed Single Resolution Mechanism (SRM) Regulation.

The COREPER's agreement will enable the Parliament to approve the text of the SRM Regulation at first reading, which is scheduled for the Parliament's plenary session on 14 to 17 April 2014. The Council will then adopt the Regulation without further discussion.

## 7. CRR: EBA FINAL DRAFT RTS ON LIQUIDITY REQUIREMENTS

On 28 March 2014, the EBA published the final [draft RTS](#) on additional liquidity outflows corresponding to collateral needs resulting from the impact of an adverse market scenario on the institution's derivatives transactions, financing transactions, and other contracts for liquidity reporting under Article 411(3) of the Capital Requirements Regulation (CRR).

The RTS aim to strengthen resilience against liquidity risk in the EU banking sector and will be part of the EU single rulebook aimed at enhancing regulatory harmonisation across the sector. They specify methods to determine additional collateral outflows stemming from the impact of an adverse market scenario on an institution's derivatives positions, financing transactions and other contracts, if material. In particular, they focus on capturing adverse changes in market valuation of derivatives and similar transactions and contracts that require collateral.

The EBA has submitted the draft RTS to the European Commission for their adoption as EU Regulations.

## NEW REGULATIONS

### 1. EUROPEAN COMMISSION ADOPTS DELEGATED REGULATION ON CRITERIA TO IDENTIFY MATERIAL RISK TAKERS FOR CRD IV REMUNERATION PURPOSES

On 4 March 2014, the European Commission published the text of the delegated Regulation setting out RTS aimed at identifying staff deemed to be "material risk takers". The Regulation targets credit institutions and investment firms and makes the material risk takers at these firms subject to the CRD IV requirements on variable remuneration.

The European Parliament and the Council have one month to exercise their right of scrutiny, with the possibility to extend this period for a further two months at their initiative. Following the expiry of this

scrutiny period, the RTS will be published in the EU's OJ and will enter into force on the twentieth day following the date of their publication.

## **2. EUROPEAN COMMISSION ADOPTS NINE DELEGATED REGULATIONS ON CRD IV REGULATORY TECHNICAL STANDARDS**

On 12 and 13 March 2014, the European Commission published the texts of nine delegated Regulations containing RTS adopted pursuant to the CRR and the Capital Requirements Directive (CRD IV Directive). The RTS relate to:

- Market risk.
- Credit risk and operational risk.
- Credit valuation adjustment risk.
- Covered bonds.
- Securitisations.
- Information exchange between competent authorities on firms passporting under CRD IV.
- Remuneration.

The European Parliament and the Council have one month to exercise their right of objection, with the possibility to extend this period for a further two months at their initiative. Following the expiry of this objection period, the RTS will be published in the EU's OJ and will enter into force on the twentieth day following the date of their publication.

## **3. EMIR: DELEGATED REGULATION ON ESMA PROCEDURE FOR IMPOSING FINES AND PERIODIC PENALTY PAYMENTS ON TRADE REPOSITORIES**

On 13 March 2014, the European Commission published a [delegated Regulation](#) on the exercise of ESMA's powers to impose fines and penalties on trade repositories pursuant to EMIR (the Regulation on OTC derivative transactions, central counterparties and trade repositories). The delegated Regulation specifies, in particular, the rules of procedure to be followed by ESMA when imposing fines or periodic penalty payments on trade repositories. Its provisions are largely procedural, and refer to limitation periods, the right to be heard, and access to file.

The Regulation EU Council and the European Parliament will now consider the delegated Regulation. In the interest of "immediate and effective supervisory and enforcement activity", the delegated Regulation will come into force on the third day following publication in the EU's OJ.

## **4. SEPA MIGRATION REGULATION PUBLISHED IN THE OJ**

On 20 March 2014, the text of the Single Euro Payments Area (SEPA) Migration Regulation has been [published](#) in the OJ. The Regulation has retroactive effect and applies from 31 January 2014.

## **5. EMIR: DELEGATED REGULATION ON RTS ON NON-EU COUNTERPARTIES PUBLISHED IN OFFICIAL JOURNAL**

On 21 March 2014, the European Commission published in the EU's OJ the [delegated Regulation](#) relating to RTS specifying the contracts that are considered to have a direct, substantial and foreseeable effect within the EU. The delegated Regulation will enter into force 20 days after the date of its publication in the OJ. However, Article 2 will only apply from 10 October 2014.

## NEW GUIDANCE

### 1. ESMA PUBLISHES LISTS OF AUTHORISED CCPs AND OTC DERIVATIVES UNDER EMIR

On 20 March 2014 – following [authorisation](#) of Nasdaq OMX Clearing AB as the first EU-based central counterparty (CCP) under EMIR – ESMA has published the information about the contracts that CCPs are authorised to clear.

The new information is published in the form of:

- a [List of CCPs authorised to offer services and activities in the Union in accordance with EMIR](#). The list, which currently only contains information on Nasdaq OMX, includes the classes of financial instruments covered by the CCP's authorisation.
- a [Public register for the clearing obligation under EMIR](#). The register lists the classes of OTC derivative contracts that CCPs have been authorised by their national competent authority (NCA) to clear. Again, the only contracts currently listed relate to Nasdaq OMX.

ESMA will propose draft RTS on the clearing obligation if the classes of OTC derivatives notified to it meet the criteria defined in EMIR.

The clearing obligation procedure is triggered each time a new CCP clearing OTC derivatives is authorised. ESMA will assess the suitability for clearing of the classes of derivatives notified to it. This means that if CCPs are authorised on different dates, several clearing obligation procedures may run in parallel. For each of these procedures, ESMA has up to six months from the time of the notification to draft RTS, consult and submit them to the European Commission for endorsement. After the Commission's endorsement, the RTS are subject to a non-objection period by the EU Council and the European Parliament, after which the clearing obligation will be phased in depending on the type of counterparty.

### 2. ESMA FINAL REPORT AND Q&A ON REVISION OF GUIDELINES ETFs AND OTHER UCITS ISSUES

On 25 March 2014, ESMA published its [final report](#) and a Q&A on the revision of the guidelines on exchange traded funds (ETFs) and other UCITS issues.

Annex I of the final report sets out ESMA's position on collateral management by UCITS. The guidelines in Annex I modify the rules on collateral diversification in paragraph 43(e) of the existing guidelines and introduce some further consequential changes. The guidelines will be translated into the official EU languages and published on ESMA's website. The publication of the translations will trigger a two-month period during which national competent authorities must notify ESMA whether they comply or intend to comply with the guidelines.

### 3. EBA FINALISES GUIDELINES ON THE APPLICABLE NOTIONAL DISCOUNT RATE FOR VARIABLE REMUNERATION UNDER CRD IV

On 27 March 2014, the EBA published final [guidelines](#) on the applicable notional discount rate for variable remuneration under Article 94(1)(g)(iii) of the CRD IV Directive. The guidelines are intended to support EU member states in the calculation of the ratio between the variable and fixed component of total remuneration and refer to services or performance provided from 2014 onwards.

#### 4. EUROPEAN COMMISSION HAS PUBLISHED A COMMUNICATION AND FAQs ON CROWDFUNDING

On 28 March 2014, the European Commission published a [Communication](#) discussing some of the key challenges associated with crowdfunding *i.e.*, the open calls to the wider public, often made through the internet, to finance specific projects. The Communication announces a study on crowdfunding, planned for 2014, and the creation of a European Crowdfunding Stakeholder Forum.

#### 5. ESMA OPINION ON STRUCTURED RETAIL PRODUCTS – GOOD PRACTICES FOR PRODUCT GOVERNANCE ARRANGEMENTS

ESMA published, on 28 March 2014, an [opinion](#) on certain aspects linked to the manufacturing and distribution of structured retail products. The opinion lists examples of good practices which competent authorities should promote when supervising firms that manufacture or distribute a structured retail products. While the good practices focus on structured products sold to retail investors, ESMA considers that they may also be a relevant reference for other types of financial instruments (such as asset backed securities, or contingent convertible bonds, or financial instruments sold to professional clients).

### UNITED KINGDOM DEVELOPMENTS

Please see our [United Kingdom Bulletin](#), for more information on developments in the United Kingdom.

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