

BULLETIN | EU FINANCIAL SERVICES AND REGULATION

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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. MiFID II AND MiFIR CONSULTATION PROCESS

As announced in our May Bulletin, on 22 May 2014, the European Securities and Markets Authority (ESMA) launched the consultation process for the implementation of the recast Markets in Financial Instruments Directive (MiFID II) and Markets in Financial Instruments Regulation (MiFIR).

The consultation process consists of a [Discussion Paper](#) and a [Consultation Paper](#), which contain draft technical advice and questions on the proposed Regulatory Technical Standards (“RTS”) and Implementing Technical Standards (“ITS”). The deadline for submitting responses to both papers is 1 August 2014.

Before the deadline, ESMA will hold three [open hearings](#), covering market issues (7 July 2014), investor protection issues (8 July 2014), and commodity derivatives (8 July 2014).

2. COMMISSION REQUEST FOR ESMA TECHNICAL ADVICE ON MAR

On 2 June 2014, ESMA [published](#) the European Commission’s request for technical advice on the implementation of the Market Abuse Regulation (MAR). MAR aims to update and strengthen the existing rules on insider dealing and market manipulation, which were provided by the original Market Abuse Directive (MAD).

The Commission’s request relates to technical advice on procedures that would enable the reporting of actual or potential infringements of MAR to national competent authorities, and in particular:

- the arrangements for reporting and for following up reports;
- measures for the protection of persons working under a contract of employment; and
- measures for the protection of personal data.

ESMA should deliver the advice within eight months of 2 July 2014, when MAR entered into force. The implementing acts should apply 24 months after MAR enters into force i.e., 3 July 2016.

3. ECB OPINION ON PROPOSED MONEY MARKET FUNDS REGULATION

On 4 June 2014, the European Central Bank (ECB) published an [opinion](#) on the European Commission's proposed Regulation on Money Market Funds (MMF Regulation), which forms part of a recent wider international effort to develop a regulatory framework for shadow banking entities. The ECB comments *inter alia* on the following matters:

- The complementary nature of the proposed Regulation and the legal frameworks for undertakings for collective investment in transferable securities (UCITS) and alternative investment fund managers (AIFMs);
- Financial stability;
- The constant net asset value of money market funds (MMFs);
- The provision of external support;
- Risk management of MMFs;

- The role of MMFs in intermediation;
- Internal rating systems; and
- Reporting requirements for MMFs.

4. EBA FINAL DRAFT ITS ON DISCLOSURE FOR LEVERAGE RATIO UNDER CRR

On 5 June 2014, the European Banking Authority (EBA) submitted to the European Commission [final draft](#) ITS relating to disclosure of the leverage ratio under Article 451(2) of the Capital Requirements Regulation (Regulation 575/2013, or CRR).

The disclosure framework set out in the ITS consists of four templates:

- A table reconciling the figures of the leverage ratio denominator with those reported under the relevant accounting standards;
- A table providing a breakdown of the leverage ratio denominator by exposure category;
- A table providing a further breakdown of the leverage ratio denominator by group of counterparty; and
- A table with qualitative information on leverage risk.

5. EBA CONSULTS ON RTS ON ASSESSMENT METHODOLOGIES FOR USE OF ADVANCED MEASUREMENT APPROACHES FOR OPERATIONAL RISK

On 12 June 2014, the European Banking Authority (EBA) published a [Consultation Paper](#) on draft RTS assessing the criteria that competent authorities need to consider before granting institutions permission to use advanced measurement approaches (AMA) for calculating their capital requirements for operational risk.

The draft RTS have been developed on the basis of the CRR. The CRR sets out requirements relating to the assessment under which the competent authorities permit institutions to use AMA for own funds calculation and requirements for operational risk. Specifically, the draft RTS:

- Detail the assessment methodology to be used by competent authorities for operational risk AMA models;
- Clarify the scope of operational risk, as well as the scope of operational risk loss, and specify common standards for the supervisory assessment of a bank's operational risk governance with respect to the role and responsibilities of the operational risk management function and the reporting system;
- Lay down criteria for the supervisory assessment of the key methodological components of the operational risk measurement system; and
- Establish criteria for the supervisory assessment of banks' data quality and IT systems, requirements and terms for the "use test", as well as terms and the scope of audit and internal validation of the AMA framework.

Interested parties may submit comments on the draft RTS are requested by 12 September 2014. Subsequently, by 31 December 2014, EBA is required to submit the draft RTS to the European Commission.

6. EBA CONSULTS ON GUIDELINES ON MATERIALITY, PROPRIETARY AND CONFIDENTIALITY AND ON DISCLOSURE FREQUENCY

On 13 June 2014, the European Banking Authority (EBA) published a [Consultation Paper](#) on proposed guidelines on materiality, proprietary and confidentiality and disclosure frequency under the CRR. The proposed guidelines are intended to provide common frameworks that cover:

- The process that institutions should follow in their assessments of the use of any disclosure waiver and of their need to disclose information in Part Eight of the CRR more frequently than annually;
- The criteria that institutions should consider in the assessments of the use of any disclosure waiver and of their need to disclose information in Part Eight of the CRR more frequently than annually; and
- The information that institutions should provide when using the disclosure waivers or choosing to disclose more frequently.

The deadline for responses is set for 13 September 2014 and the EBA is required to publish the final version of the guidelines by 31 December 2014.

7. EU COUNCIL SETS OUT COMPROMISE PROPOSALS AND GENERAL APPROACH ON MLD4 AND THE WIRE TRANSFER REGULATION

On 15 June 2014, the Presidency of the EU Council published the [text](#) of its general approach on the proposed Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (known as the revised Money Laundering Directive or MLD4). Further, the Presidency has published the [text](#) of its general approach on the proposed Regulation to amend and replace Regulation (EC) 1781/2006 on information on the payer accompanying transfers of funds (together known as the “AML” package).

The AML package updates and improves the EU’s existing legislation, taking into account the latest recommendations of the international Financial Action Task Force (FATF).

On 18 June 2014, the EU Council formally agreed the AML package. Starting in the autumn, the EU Commission will work with the Council and the European Parliament to agree on the final texts.

8. EUROPEAN COMMISSION CONSULTS ON CONTRIBUTIONS OF CREDIT INSTITUTIONS TO RESOLUTION FINANCING ARRANGEMENTS UNDER BRRD AND SRM REGULATION

On 20 June 2014, the European Commission launched a [consultation](#) on the contributions of credit institutions to resolution financing arrangements under the Bank Recovery and Resolution Directive (BRRD) and the Single Resolution Mechanism Regulation (SRM Regulation).

The Commission seeks comments on the following issues:

- The calculation of contributions and, in particular, whether the contributions of groups should be calculated at individual or consolidated level;
- The application of the principle of proportionality to contributions payable by small credit institutions;

- The respective weightings of the “flat” contribution and the risk-adjusted part of the contribution under Article 103(2) of the BRRD and Article 66 of the SRM Regulation; and
- The individual risk indicators used to assess credit institutions’ risk profiles and to produce an adjustment mechanism for the flat contribution.

The deadline for responses to the Consultation is 14 July 2014. The Commission intends to adopt the delegated act under the BRRD and the proposal for the Council simultaneously in September 2014. The [text](#) of the BRRD was published in the EU’s Official Journal (OJ) on 12 June 2014.

9. COUNCIL OF THE EU AGREES GENERAL APPROACH ON ELTIF REGULATION

On 25 June 2014, the EU Council [agreed](#) a general approach on the proposed Regulation on European Long-Term Investment Funds (ELTIF Regulation). ELTIFs would be able to invest in businesses that need money to be committed to them for long periods of time, but would be subject to certain requirements set out in EU law, including the types of long-term assets and firms that the ELTIFs are allowed to invest in; how they have to spread their money to reduce risks; and the information they have to give to investors. Any ELTIF manager would also have to comply with all of the stringent requirements of the Alternative Investment Fund Managers Directive (AIFMD).

The Italian Presidency of the Council, which started its work on 1 July 2014, will now negotiate the proposal with the Commission and the European Parliament.

NEW REGULATIONS

1. MAD II PUBLISHED IN THE OFFICIAL JOURNAL

As mentioned above, on 12 June 2014, the [text](#) of the Market Abuse Regulation (MAR) and the [text](#) of the Directive on criminal sanctions for insider dealing and market manipulation (CSMAD) (together, MAD II) were published in the EU’s OJ.

The MAD II rules aim to update and strengthen the existing rules on insider dealing and market manipulation, which were provided by the Market Abuse Directive (MAD).

MAD II entered into force on 2 July 2014. MAR will apply from 3 July 2016, with the exception of certain provisions specified in Article 39(2), which will apply from 2 July 2014. Member States have until 3 July 2016 to transpose CSMAD into their national law.

2. MiFID II AND MiFIR PUBLISHED IN THE OFFICIAL JOURNAL

On 12 June 2014, the [text](#) of the MiFID II Directive and the [text](#) of the Markets in Financial Instruments Regulation (MiFIR) were published in the EU’s OJ. Both texts were adopted by the European Parliament on 15 April 2014.

MiFID II and MiFIR came into effect on 2 July 2014. Member States must adopt and publish by 3 July 2016 the measures transposing MiFID II into national law and must apply those provisions from 3 July 2017. The only exceptions are in relation to the provisions transposing Article 65(2), which will apply from 3 September 2018, and the measures referred to in Article 92 regarding AIFMs, which will apply from 3 July 2015.

MiFIR will apply from 3 July 2017, with the exception of certain provisions detailed in Article 55 which will apply immediately on MiFIR's entry into force and Article 37(1), (2) and (3), which will apply from 3 January 2019.

NEW GUIDANCE

1. EBA PUBLISHES FINAL DRAFT TECHNICAL STANDARDS AND GUIDELINES ON METHODOLOGY AND DISCLOSURE FOR G-SIIs

On 5 June 2014, the European Banking Authority (EBA) published draft technical standards and guidelines on methodology and disclosure for global systemically important institutions (G-SIIs) under the Capital Requirements Directive (CRD IV) and the CRR. Among other things, CRD IV requires G-SIIs to hold higher capital levels to contain the risks they pose to the financial system and the impact that their potential failure may have on sovereign finance and taxpayers, the so-called "too big to fail" problem.

An accompanying [press release](#) states that the first identification as G-SIIs, on which the new rules impose higher capital requirements, will take place in January 2015. The higher capital requirements will apply one year after the publication – by competent authorities in each Member State – of banks' scoring results. This will allow the relevant institutions enough time to adjust to the new requirements.

2. ESMA AND EBA PUBLISH FINAL REPORT ON GUIDELINES FOR COMPLAINTS HANDLING IN THE SECURITIES AND BANKING SECTORS

ESMA and the European Banking Authority (EBA) have [published](#) a Joint Committee report setting out their final guidelines for complaints handling in the securities and banking sectors.

The report takes into account the existing complaints-handling guidelines established by the European Insurance and Occupational Pensions Authority (EIOPA) to ensure consistency in complaints handling across all Member States in the investment, banking and insurance sectors.

The guidelines will now be translated into the official languages of the EU, and published on the ESMA and the EBA websites. The application and reporting requirement dates set out in the guidelines will start to run from the date of publication of the translations.

3. ECB PUBLISHES LIST OF SIGNIFICANT CREDIT INSTITUTIONS FOR PURPOSES OF SSM

On 26 June 2014, the ECB published a draft [list](#) of credit institutions that it has notified of its intention to consider significant for the purposes of the single supervisory mechanism (SSM).

Under Article 6(4) of the SSM Regulation, the ECB will directly supervise significant credit institutions, representing almost 85% of total banking assets in the Euro currency area.

The ECB will apply specific criteria to determine whether a credit institution should be considered significant. In addition, in each country participating in the SSM, at least the three most significant credit institutions will be subject to direct supervision by the ECB, irrespective of their size.

The ECB will publish the final list of the significant credit institutions in September 2014. The list will be reviewed on a regular basis.

UNITED KINGDOM DEVELOPMENTS

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

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