

BULLETIN | EU FINANCIAL SERVICES AND REGULATION

July 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. EBA FINAL DRAFT RTS ON ASSESSING MATERIALITY OF EXTENSIONS AND CHANGES OF INTERNAL APPROACHES FOR MARKET RISK

On 4 July 2014, the European Banking Authority (EBA) published [final draft regulatory technical standards](#) (RTS) on the conditions for assessing the materiality of extensions and changes of internal approaches for market risk under Article 363(4) of the Capital Requirements Regulation (CRR).

The CRR and the recast Capital Requirements Directive (CRD) (together the CRR and recast CRD are known as the CRD IV) set out prudential requirements for banks and other financial institutions, which have applied since 1 January 2014. The CRR contains specific mandates for the EBA to develop draft RTS to specify the conditions for assessing the materiality of extensions and changes of internal approaches when calculating own funds requirements for market risk.

The draft RTS include [key features](#) such as the:

- Introduction of three categories of model extensions and changes.
- Introduction of an exhaustive list of qualitative conditions that is linked to the minimum requirements for internal approaches.
- Design of quantitative thresholds as a back-stop regime.
- Inclusion of standardised documentation requirements that enable competent authorities to assess compliance of institutions with the relevant rules.

The RTS will now be adopted by the European Commission in the form of an EU Regulation.

2. EBA FINAL DRAFT RTS ON MARGIN PERIODS OF RISK USED FOR TREATMENT OF CLEARING MEMBERS' EXPOSURES TO CLIENTS

Following the European Banking Authority's (EBA) consultation in February 2014, on 4 July 2014, the EBA published its [final draft RTS](#) on the margin periods of risk used for the treatment of clearing members' exposures to clients under Article 304(5) of the CRR.

The draft RTS specify the minimum margin periods of risk (MPOR) in a different manner for different classes of derivatives to be used in both the internal and standardised approaches, therefore covering the full spectrum of derivative types for all counterparty credit risk models. They set the MPOR at a level that is equal to whichever is the longer period: the regulatory minimum of five days, or the liquidation period disclosed by the central counterparties (CCPs).

The RTS will now be adopted by the European Commission in the form of an EU Regulation.

3. EUROPEAN COMMISSION CONSULTS ON ECONOMIC CONSEQUENCES OF COUNTRY-BY-COUNTRY REPORTING UNDER CRD

On 11 July 2014, the European Commission published a [consultation](#) on the potential economic consequences of country-by-country reporting under the CRD.

Article 89 of the CRD requires firms to disclose—on a country-by-country basis—key specified information relating to their businesses. This extends to (i) general information listed at Article 89(1)(a) to (c) (names, nature of activities and geographical location, turnover and employee

numbers) and (ii) potentially more sensitive information listed at Article 89(1)(d) to (f) (profit on loss before tax, tax on profit and loss and public subsidies received). The obligation to disclose the Article 89(1)(d) to (f) information applies from 1 January 2015, while the disclosure obligation for the Article 89(1)(a) to (c) has applied from 1 July 2014.

In the consultation, the Commission seeks stakeholders' views on the potential negative economic consequences of disclosing the Article 89(1)(d) to (f) information, in particular the effects of such disclosure on competitiveness, investment, credit availability, and the stability of the financial system. If the Commission identifies significant negative consequences of the disclosure, it may defer the obligation to disclose the Article 89(1)(d) to (f) information.

The questionnaire is available on the Commission's [webpage](#)—the deadline for responses is 12 September 2014.

4. ESMA CONSULTS ON NEW MARKET ABUSE REGIME

On 15 July 2014, ESMA published a [consultation paper](#) on draft technical advice on possible delegated acts concerning Regulation 596/2014 (the Market Abuse Regulation—MAR). The new rules on market abuse update and strengthen the existing framework provided by the pre-existing Market Abuse Directive (2003/6/EC) to ensure market integrity and investor protection; they will apply from July 2016. ESMA's consultation covers:

- Specification of the indicators of market manipulation.
- Minimum thresholds for the purpose of the exemption for certain participants in the emission allowance market from the requirement to disclose inside information publicly.
- Determination of the competent authority for notification of delays in public disclosure of inside information.
- Managers' transactions.
- Reporting of infringements.

Also on 15 July 2014, ESMA published a [consultation paper](#) on draft RTS and implementing technical standards (ITS) under MAR, including:

- Draft RTS relating to buy-back programmes and stabilisation measures, market soundings and accepted market practices.
- Draft ITS relating to market soundings.
- Draft RTS relating to the prevention and detection of market abuse.
- Draft ITS relating to the disclosure of inside information and the delay of disclosure of inside information, insider lists, and managers' transactions.
- Draft RTS relating to investment recommendations or other information recommending or suggesting an investment strategy.

ESMA will hold an open hearing on the new MAR regime before 8 October 2014, and stakeholders will be able to comment on the papers until 15 October 2014.

5. EBA FINAL DRAFT RTS AND GUIDELINES ON BRRD RECOVERY PLANS

On 18 July 2014, the EBA published the following documents relating to recovery plans under the Bank Recovery and Resolution Directive (BRRD):

- [Final RTS on the content of recovery plans under Article 5\(10\) of the BRRD](#). These RTS determine and specify the minimum elements that must be included in firms' recovery plans,

including: the summary of the plan; information on governance; a strategic analysis; a communication plan; and a description of preparatory measures.

- [Final draft RTS on the assessment of recovery plans under Article 6\(8\) of the BRRD](#) . These RTS identify the principles and criteria that supervisory authorities should follow when assessing the completeness, the quality and the credibility of recovery plans.
- [Guidelines on the range of scenarios to be used in recovery plans](#). Article 5(7) of the BRRD requires the EBA to publish guidelines specifying the range of scenarios of severe macro-economic and financial distress that firms should consider to test the effectiveness of recovery options and the adequacy of the indicators in their recovery plans.

The EBA will submit the final draft RTS to the European Commission, which will adopt them in the form of delegated regulations. Competent authorities and firms will be expected to comply with the guidelines from 1 January 2015 or the date on which their home member state applies provisions implementing the relevant articles of the BRRD (whichever date is earlier).

6. ESMA DISCUSSION PAPER ON CALCULATION OF COUNTERPARTY RISK BY UCITS FOR OTC DERIVATIVES SUBJECT TO EMIR CLEARING

On 23 July 2014, ESMA published a [discussion paper](#) on the calculation of counterparty risk by UCITS for OTC derivative transactions subject to clearing obligations.

Under the European Market Infrastructure Regulation (EMIR), certain OTC derivative transactions will be subject to the clearing obligation. In the light of these new requirements, ESMA is seeking views on how the limits on counterparty risk in centrally cleared OTC derivative transactions under the UCITS IV Directive (2009/65/EC) should be calculated, and whether the same rules should be applied for both OTC transactions that are centrally cleared and exchange-traded derivatives (ETDs).

The UCITS IV Directive allows UCITS to invest in both ETDs and OTC derivatives, but only investments in OTC derivatives are currently subject to counterparty risk exposure limits.

The ESMA discussion paper distinguishes between several different clearing arrangements—for each arrangement, ESMA analyses the impact of a default of the clearing member and the client for the calculation of counterparty risk by UCITS.

The consultation closes on 22 October 2014. ESMA will use the feedback it receives to determine its final views on the appropriate way forward, including a possible recommendation to the European Commission on a modification of the UCITS IV regime.

7. EU COUNCIL PUBLISHES REVISED TEXT OF UCITS V

The EU Council has published a [revised text](#) of the UCITS V Directive, which follows its adoption by the EU Council on 23 July 2014.

8. EU COUNCIL COMPROMISE PROPOSAL ON PSD2

On 23 July 2014, the Presidency of the EU Council published its second [compromise proposal](#) relating to the proposed Directive on payment services in the internal market (PSD2).

9. EU COUNCIL ADOPTS THE PAYMENT ACCOUNTS DIRECTIVE

On 23 July 2014, the EU Council [announced](#) the adoption of the Payment Accounts Directive (PAD), which will enter into force on the twentieth day following the date of its publication in the EU's OJ. Member States will have two years to transpose the PAD into national law.

10. EU COUNCIL PUBLISHES REVISED TEXT OF CSDR

The EU Council has published a [revised proposal](#) for the Regulation on improving securities settlement and regulating central securities depositories (CSDR).

11. COMMISSION MAKES PROVISIONAL REQUEST TO ESMA FOR TECHNICAL ADVICE ON POSSIBLE DELEGATED ACTS UNDER THE CSDR

On 23 July 2014, the European Commission published a [letter](#) to ESMA setting out a request for technical advice concerning possible delegated acts relating to settlement discipline measures and aspects relating to supervisory co-operation under the proposed CSDR. The letter relates to the following provisions of the CSDR:

- **Penalties for settlement fails:** Article 7 of the CSDR provides for a set of strict measures to address settlement fails. These include cash penalties for a participant of a securities settlement system operated by a CSD that fails to settle on the agreed date. Article 7(13) of the CSDR requires the Commission to adopt a delegated act to specify the parameters for the calculation of a deterrent and proportionate levels of cash penalties for settlement failures.
- **Supervisory co-operation:** Article 24 of the CSDR provides for various co-operation measures between home and host member states where a CSD provides services on a cross-border basis (exercising passport rights). They must establish formal co-operation arrangements for the supervision of a CSD where the CSD's activities have become "of substantial importance for the functioning of the securities markets and the protection of the investors" in the host member state. Article 24(7) of the CSDR requires the Commission to adopt delegated acts concerning measures for establishing criteria under which the importance of the operations of the CSD could be considered to amount to this. The Commission requests advice, in particular, on the meaning of "substantial importance" in this context.

12. EBA FINAL DRAFT ITS AMEND IMPLEMENTING REGULATION ON SUPERVISORY REPORTING FOR INSTITUTIONS

On 30 July 2014, the European Banking Authority (EBA) published ITS amending the European Commission's Implementing Regulation on supervisory reporting of institutions (*Regulation 680/2014*) under the Capital Requirements Regulation (CRR), which was published in the EU's OJ on 28 June 2014.

The [ITS](#) include minor changes to templates and instructions that were necessary to reflect some of the answers published in the EBA's single rulebook Q&As (most recently updated on 25 July 2014), as well as to correct legal references and other clerical errors. The templates and instructions are set out in Annexes 1 to 7 to the ITS, which are linked to from the EBA [webpage](#) on the ITS (and include a [link](#) to a version of the annexes showing track changes). The amendments are expected to apply as of December 2014.

While validation rules and data point model are expected no longer to be part of the ITS on supervisory reporting of institutions (due to the proposed deletion of Annexes 14 and 15 to Regulation 680/2014), they will remain available for downloading on the [EBA's website](#) along with the applicable taxonomy, which it expects to be published in August 2014.

NEW REGULATIONS

1. ECB REGULATION ON OVERSIGHT REQUIREMENTS FOR SYSTEMICALLY IMPORTANT PAYMENT SYSTEMS PUBLISHED IN THE OJ

On 23 July 2014, the ECB's Regulation on oversight requirements for systemically important payment systems was [published](#) in the EU's OJ.

The Regulation implements the principles for financial market infrastructures issued by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO) in April 2012. The principles are designed to harmonise and strengthen international oversight standards for a range of market infrastructures, including systemically important payment systems (SIPS). Specifically, the Regulation lays down oversight requirements for both large value payment systems and systemically important retail payment systems. It applies to payment systems operated by both central banks and private operators (subject to certain exemptions).

The Regulation will come into force on the twentieth day following its publication in the EU's OJ (i.e., on 15 August 2014). However, SIPS operators will benefit from a transitional period of one year from the date on which they were notified of the decision to comply with the oversight requirements.

2. SRM REGULATION PUBLISHED IN THE OJ

On 30 July 2014, the [text](#) of the Regulation for a Single Resolution Mechanism (SRM Regulation) was published in the EU's OJ.

The Regulation will come into force 20 days after its publication in the OJ, that is, 19 August 2014. It will apply from 1 January 2016, with the exception of certain provisions relating to the establishment of the SRM and the making of delegated and implementing acts, which will apply sooner.

NEW GUIDANCE

1. ESMA UPDATES Q&A ON EMIR IMPLEMENTATION

On 10 July 2014, ESMA published an updated version of its [Q&A](#) on the implementation of EMIR.

2. FINANCIAL REPORTING: ESMA FINAL GUIDELINES ON ENFORCEMENT OF FINANCIAL INFORMATION

Also on 10 July 2014, ESMA published its [final guidelines](#) on the enforcement of financial information published by listed entities in the EU. Through the guidelines, ESMA intends to strengthen and promote greater supervisory convergence in existing enforcement practices amongst EU accounting enforcers. The guidelines set out the principles to be followed by EU accounting enforcers throughout the enforcement process by defining the objectives, the characteristics of the enforcers, and some common elements in the enforcement process.

3. ESMA CONSULTS ON GUIDELINES ON PERIODIC INFORMATION SUBMITTED TO IT BY CRAS

On 16 July 2014, ESMA published a [consultation paper](#) on draft guidelines on periodic information submitted to it by credit rating agencies (CRAs) which better reflect ESMA's view of the keys risks in the sector. The draft guidelines cover:

- information to be contained in periodic submissions;
- notifications of material changes to the initial conditions for registration;
- calculation of the supervisory fee; and
- CRA market share calculation.

The deadline for responses is 31 October 2014. ESMA intends to publish a final report and guidelines and recommendations by Q1 2015.

4. ESMA UPDATES Q&A ON APPLICATION OF AIFMD

On 21 July 2014, ESMA published an [updated version](#) of its Q&A paper on the application of the Alternative Investment Fund Managers Directive (AIFMD). The new Q&As are grouped under the following headings:

- Reporting to national competent authorities under Articles 3, 24 and 42.
- Depositories.
- Calculation of leverage.

UNITED KINGDOM DEVELOPMENTS

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

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