

Regulatory developments for financial institutions

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C5, London, 6 November 2012

Agenda

- International
 - Basel III
 - G-SIFIs: recovery and resolution regimes
 - Shadow banking
 - Other
- EU
 - Banking union
 - Transactions tax
- US
 - FATCA
- UK
 - Independent Banking Commission ('Vickers')
 - Conduct

G20: Mexico, June 2012

- Basel III: policy completed; implementation amber

Additional capital for G-SIBs (Nov 2012)

Bucket	G-SIBs	
5 (3.5%)	(Empty)	
4 (2.5%)	Citigroup Deutsche Bank HSBC JP Morgan Chase	
3 (2.0%)	Barclays BNP Paribas	
2 (1.5%)	Bank of America Credit Suisse Mitsubishi UFJ RBS	Bank of NY Mellon Goldman Sachs Morgan Stanley UBS

G20 – report by Basel Committee

- Report for G20 in November 2012 on
 - Update on domestic rule-making*
 - Regulatory consistency assessment of EU, Japan and US
 - Findings on banks' risk measurement approaches and regulatory capital calculations.

*As at 31/5/12, draft B3 regs not issued by Argentina, Hong Kong, Indonesia, Korea, Russia, Turkey, but all expect to have done so by deadline of 1/1/13.

2 November 2012 (FSB): Weak banking supervisory co-operation: Argentina, India, Indonesia, Russia, Turkey

G20: Mexico, June 2012

- Basel III: policy completed; implementation amber
- Global SIFIs – recovery and resolution regimes:
 - policy completed
 - implementation (G-SIBs by end 2012) on course
 - global crisis management groups in place
 - full domestic recovery and resolution regimes slow progress - review 2012H2; FSB guidance published Nov 2012; EC draft Directive June 2012 for implementation by 1/1/15.

G20: Mexico, June 2012

- Basel III
- Global SIFIs – recovery and resolution regimes
- Shadow banking

Shadow banking

- EU and FSB aiming for comprehensive supervision of shadow banking and adequate regulatory framework
- FSB / EU workstreams
 - Banks' inter-reaction with shadow banking entities
 - Money market funds
 - Securities lending and repos
 - Securitisation
 - Other shadow banking entities
- FSB workstreams Q3/4 2012 reporting deadline.

Shadow banking - EBA

- EBA green paper (consultation June 2012):
 - Definition
 - Risks generated by shadow banking
 - Issue of consolidation from prudential and accounting standpoint
 - Large exposure regime
 - Need to prevent regulatory arbitrage and assess need for regulation ability
- Concerns:
 - Focus on problems and activities which pose systemic risk, rather than entities
 - Care not to outlaw legitimate activities, but the way they're executed
 - May stifle economic growth
 - Move entities on-balance sheet and so increased capital requirements

G20: Mexico, June 2012

- Basel III
- Global SIFIs – recovery and resolution regimes
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- OTC derivatives: on course for end 2012
- Emerging markets: unintended consequences
- End mechanical reliance on credit ratings: call for more progress nationally
- Supervisory co-operation: international assessment and peer review now in place

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Eurozone – banking union

- Presidents of European Council, European Commission, Eurogroup and ECB established work programme on deepening economic and monetary union and establishing a single banking supervisor (ECB) for eurozone.
- Aims:
 - Single rulebook
 - Harmonised deposit protection
 - Single recovery and resolution regime
- New authority to be established 1/1/13; functions phased in by 1/1/14.

Financial transactions tax

- Aims:
 - Make FI's pay for cost of crisis
 - Harmonise national regulations
 - Discourage undesirable market behaviour as a drive to financial stability
- France introduces tax (Feb 2012)
- Proposal for Financial Transaction Tax Directive. Lack of full support within Ecofin (22/6/12). Suggestion that those in favour aim for enhanced co-operation with agreement by 12/12.
- October 2012: letters from French and German Finance Ministers urging EC and EU finance ministers to get agreement

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Foreign Account Tax Compliance Act (FATCA)

- FATCA provides for withholding tax of 30% on payments made to FFI's and on payments made by them to US citizens.
- Model intergovernmental agreement (Model 1) with US and France, Germany, Italy, Spain and UK published (26/7/12).
 - Model 1 countries' FFIs deemed compliant if they and their affiliates report to their local tax authorities.
 - Reporting will be inter-governmental.
 - All reporting begins 2013 for G5 countries. And of affiliates 2016.
- Model 2 agreement with Japan and Switzerland (June 2012) under which FFIs would register individually with IRS and either be exempted from FATCA or agree to share FATCA information with the IRS.

FATCA and UK

- HMT view: proportionate; data protection addressed; withholding taxes avoided; due diligence requirements more closely aligned to AML; HMRC will obtain more info from IRS to help it in anti-tax avoidance.
- Sept 2012: UK signs Annex 2 re FIs and products seen as low risk. Legislation in 2013.

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UK: Vickers implementation

- Retail goes into the ring-fence ('economically and legally separate').
- Ring-fenced part
 - will only accept deposits (from individuals and SMEs)
 - corporates and others can be put in the 'ring-fence'.
 - prohibited from most wholesale and investment banking activities
 - not permitted to carry on business outside EEA or with financial institutions
 - limits on proprietary hedging
- Bill published; legislation early 2013
- Implications for insurers:
 - Who will be the insured?
 - What is the capital recourse or strength of the insured?

(Mis)conduct

- Financial Conduct Authority
- Conduct risk
- Current issues:
 - LIBOR
 - IRS mis-selling
 - Financial promotions
 - Investment banks – anti-bribery and corruption

(Mis)conduct (2)

- LIBOR
 - Wheatley report (Sept 2012)
 - Where's the liability?
 - Class actions for anti-competitive action
- Mis-selling interest rate hedging products
 - Compensation being paid, following FSA investigation, by: Barclays, HSBC, Lloyds, RBS. Agreement includes ability of borrower to have an independent reviewer present at all meetings or calls.
 - Reviews and similar redress by: AIB(UK), BoI, Clydesdale and Yorkshire Banks (NAG), Co-op, Northern Bank, Santander UK.

(Mis)conduct (3)

- Financial promotions – final guidance
 - Explain products clearly, especially past performance
 - Risk sandwich – risks hidden between benefits
 - Brand advertising - within rule; whereas image advertising (purely about the firm) – outside rules
- Investment bank anti-bribery and corruption (ABC) review. Common weaknesses:
 - Most firms had not taken account of FSA rules either before or after Bribery Act 2010
 - Nearly half of firms didn't have adequate ABC assessment
 - Management info poor, making it difficult to see how senior management could provide appropriate oversight
 - Significant issues in firms' dealings with 3rd parties used to win or retain business
 - Gifts, hospitality and expenses policies tightened, but few had processes to ensure rules being followed 'on a cumulative basis'.

(Mis)conduct (4)

- Financial Conduct Authority
- Conduct risk
- Current issues:
 - LIBOR
 - IRS mis-selling
 - Financial promotions
 - Investment banks – anti-bribery and corruption
 - PPI mis-selling
 - Retail Distribution Review (1/1/13 deadline)
 - Netherlands ‘general duty of care’
 - Fund managers and risk management

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