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Give me strength

It has been a few weeks now since we last had a paper on prudential matters from the FSA so it was good to see that three new papers have just been released.

"Strengthening Capital Standards 3" (CP09/29) sets out proposals for implementing changes to the Capital Requirements Directive (if you can't immediately recall papers 1 & 2 that is because they were released in 2005 and 2006 respectively). The paper combines "CRD2", which Europe requires to be applied from 31 December 2010, and "CRD3", the final text of which has yet to be agreed by Europe. As a result the paper is consulting on some issues which may be subject to change, so there may be a need for a later follow up consultation. Of perhaps most interest to the majority of firms is the (previously flagged) proposal to exempt 'limited licence' and 'limited activity' firms from the large exposures regime set out in BIPRU 10.5. This proposal will not be implemented until 1 January 2011 and until that time all firms subject to BIPRU must continue to monitor their large exposures. Interestingly, the FSA estimate that the average administrative cost for each of these firms in complying with the large exposures regime is around £5,000 p.a. Elsewhere there will be no changes to the Pillar 2 regime with some changes to Pillar 3 disclosure with the intention of increasing the amount of useful information available to market participants.

Other areas discussed include hybrid capital, securitisation and the need to strengthen capital requirements for firms with a trading book - the latter is estimated to increase capital requirements of such firms in the order of £29bn. Sections 1.7 to 1.12 of the CP contain a useful summary of the proposals.

Draft text of proposed changes in BIPRU etc. is contained in the Appendices of CP09/29.

The consultation closes on 10 March 2010.

http://www.fsa.gov.uk/pubs/cp/cp09_29.pdf

Buffers

And following hard on the heels of CP09/29 we have CP09/30 - "Capital Planning Buffers" – which is mercifully 300 pages or so shorter. A 'capital planning buffer' relates to the ICAAP requirements set out in

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BIPRU 2.2 and is the amount and quality of capital resources that a firm should hold at a given time, so that it is available to absorb losses and meet higher capital requirements in adverse external circumstances such as an economic downturn – although see the CP for the full definition. The FSA stress that this is not a new regulatory requirements but rather a clarification. It is noted from the Overview that the FSA is applying proportionality to this and so small firms may not be set capital buffers and indeed if you look at the proposed changes to the handbook it is very much based upon the SREP process in which the FSA reviews an ICAAP and sets Individual Capital Guidance.

The proposed changes to BIPRU 2.2 (which are all in the form of Guidance rather than Rules) can be reviewed in Appendix 1 of the CP.

The consultation period ends 31 March 2010 with a Policy Statement planned for Q3 2010.

http://www.fsa.gov.uk/pubs/cp/cp09_30.pdf

Stressed

And third, and finally, we have PS09/20 "Stress and Scenario Testing Feedback on CP08/24 and final rules". This CP is actually linked to CP03/30 ('Buffers'),as both emanate from CP08/24 ("Stress and Scenario Testing") issued in December 2008, and focuses primarily on improvements that the FSA expects to see in a firm's own stress testing of its ability to meet capital and liquidity requirements in stressed conditions.

Annex 3 sets out the FSA's expectations regarding stress and scenario testing.

Perhaps the major headache for some firms is the introduction of 'reverse stress testing' (basically the testing of a business plan to failure) which will add another new chapter to SYSC – SYSC 20. The (relatively) good news is that it will not come into force until 14 December 2010 but the even better news for BIPRU investment firms is that they are excluded from SYSC 20 if: (a) they manage assets or safeguard and administer investments of under £10bn; or (b) total income from its regulated activities is no more than £250m; or (c) it has assets and liabilities of no more than £2bn (all criteria to apply on a consolidated basis to all BIPRU investment firms in the group). Reference should be made to SYSC 20.1.1R(2) for the precise exclusion parameters.

Elsewhere there are changes to GENPRU 1, largely in the form of guidance, which comes into immediate effect, as is also the case with various chapters of BIPRU. Appendix 1 of the PS shows the final handbook text.

http://www.fsa.gov.uk/pubs/policy/ps09_20.pdf

Remuneration Feedback Statement

As you will know the Remuneration Code, which is set out in SYSC 19, applies from 1 January to large banks, building societies and BIPRU 730K firms. In the original Consultation Paper the FSA invited general discussion on whether to extend the Code to other FSA-authorised firms. FS 09/5 ("Reforming

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Remuneration Practices in Financial Services – Feedback on Chapter 6 of CP09/10") advises that the FSA will not introduce any new rules nor extend the existing rules to any other sectors 'at this stage'. This in part reflects the proposed Financial Services Bill which may give the FSA new powers on remuneration. In any event the FSA will review the effectiveness of the Code in the middle of next year which will give them another opportunity to consider extending it.

http://www.fsa.gov.uk/pubs/discussion/fs09_05.pdf

JMLSG Amendments to Guidance

The consultation version of the JMLSG 'Prevention of money laundering/combating terrorist financing' Guidance has been submitted to HM Treasury for Ministerial approval.

http://www.jmlsg.org.uk/bba/jsp/polopoly.jsp?d=754&a=16974

Bonus

In the current uncertainty with the new bank bonus tax it would seem that the rules will be rewritten. Asset management firms, advisers and family offices will not be hit by the new tax rules.

http://www.citywire.co.uk/adviser/-/news/adviser-news/content.aspx?ID=372480

If any of the topics discussed above raise questions or a need for guidance or support, please feel free to contact Peter Carlisle at peter.carlisle@complyport.co.uk

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