FS Regulatory Brief

EU Bonus Cap Update – Cap to Apply More Broadly

May 2013

The European Banking Authority ("EBA") recently approved draft regulations (referred to in Europe as "regulatory technical standards" or "RTS") greatly expanding the number of EU bankers that would be impacted by the EU banker bonus cap. The banker bonus cap passed the EU Parliament last month and is set to go into effect on January 2014[1], applicable to bonuses tied to performance after the effective date.

The cap will limit bonuses for employees' 2014 performance year at the level of the employee's salary, or at twice the employee's salary if shareholder approval is obtained.[2] The EBA's draft RTS greatly expands the definition of banks' material risk takers ("MRTs") subject to the cap to include all employees whose total remuneration is greater than €500,000. This €500,000 threshold will operate alongside other existing criteria for determining MRTs and senior management.

Timing and impact

The draft RTS is currently open for a public consultation period. After the EBA finalizes the RTS, it will go to the European Commission and European Parliament for approval and could become binding on all EU Member States in 2014.

This proposed expansion of MRTs will require all firms to accelerate their compensation analysis and planning. Although the consultation period allows firms opportunity to express their views to the EBA, the momentum for change from EU regulators to include more employees under the bonus cap's umbrella is considerable.

Additional background

EU regulators have been concerned with the wide differences in the criteria used by firms and national supervisory authorities to identify MRTs (and, thus, with the wide range in numbers of MRTs in different banks across Europe). As a result, the EBA was instructed as part of CRDIV – the EU's Basel III implementation which includes the bonus cap – to prepare a draft RTS on the qualitative and "appropriate quantitative" criteria to identify MRTs.

Measuring an employee's impact on a firm's risk profile in a way which reflects a diversity of activities has presented obvious difficulties. We understand that the EBA had been looking at a range of quantitative criteria and consulting with the largest EU banks, but concluded that no other measure would work effectively. They therefore proposed a monetary threshold of total compensation, over which an individual will be deemed an MRT, irrespective of their role or impact on the risk of the firm. Given the large number of small and retail banks across Europe, the prospect of an even lower threshold was possible; we have learned that the EBA considered a threshold as low as €250,000.

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[1] A few steps remain in the EU process, but they are more technical in nature and unlikely to derail the cap's implementation.

[2] For details, see PwC ***FS Regulatory Brief*** – *Bonus Cap Proposal Advances in EU (March 2013).*

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Additional information

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