

Client Alert

Bank of England Proposes New Rules on Banker Compensation Buy-Outs

January 14, 2016 – The Prudential Regulatory Authority (“PRA”), the regulatory and supervisory arm of the Bank of England, issued proposed new rules and a press release yesterday, calling on employers providing “buy-outs” to bankers to include clawback provisions in employment contracts, which allow for compensation to be clawed back if it is determined later that the individual engaged in misconduct during their prior employment.

The PRA said “[t]he practice of buy-outs has the potential to undermine the effectiveness of the current remuneration rules. When a new employer buys-out an employee’s cancelled bonus, the individual becomes insulated against the possibility of their awards being subject to ex-post risk adjustments through the application of either malus (the withholding or reduction of unpaid awards) or clawback (the recouping of paid awards). Through the practice of buy-outs, individuals can therefore effectively evade accountability for their actions.”

The PRA recommends that buy-outs managed through employment contracts should include malus or clawback provisions which account for determinations that an employee is later found guilty of misconduct arising out of their former employment. The proposed new rules, however, would still allow for the new employer to apply for a waiver to the extent they believe that the determination was unfair or unreasonable.

Copies of the [proposed new rules](#) and the [press release](#) can be found here.

If you require any additional information about these proposed rules, or any other employment-related issue, please contact: Keith Markel at (212) 735-8736 or kmarkel@morrisoncohen.com; or Alan Levine at (212) 735-8694 or alevine@morrisoncohen.com.

Keith Markel is also the author of the [FINRA Employment Arbitration Commentator](#) blog that features updates and insights related to FINRA arbitration developments, awards, and compensation and employment-related regulatory issues in the financial services industry. A link to his bio can be found here: <http://www.morrisoncohen.com/kmarkel>.