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FINANCIAL INSTITUTIONS ADVISORY & FINANCIAL REGULATORY GROUP NEWSLETTER

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Financial Regulatory Developments Focus

In this newsletter, we provide a snapshot of the principal US, European and global financial regulatory developments of interest to banks, investment firms, broker-dealers, market infrastructure providers, asset managers and corporates.

Click here if you wish to access our Financial Regulatory Developments website.

In this Issue (please click on any title to go directly to the corresponding discussion):

Bank Prudential Regulation & Regulatory Capital

US Board of Governors of the Federal Reserve System, US Office of the Comptroller of the Currency and US Federal Deposit Insurance Corporation Release Notice of Proposed Net Stable Funding Ratio Rulemaking

On May 3, 2016, the US Board of Governors of the Federal Reserve System approved a joint notice of proposed rulemaking to establish a net stable funding ratio in the US, in line with the framework previously established by the Basel Committee on Banking Supervision. The Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation previously approved the rule on April 26, 2016. The net stable funding ratio would require covered institutions to maintain stable sources of funding, including capital and long-term debt, over a one-year horizon. Specifically, a covered company's ratio of (i) "available stable funding," a measure of the stability of its equity and liabilities over a one-year time horizon to (ii) "required stable funding," a calculation made based upon the liquidity characteristics of the institution's assets, derivative exposures and commitments over the same one-year horizon, must be at least 1.0. With respect to assets that qualify as "available stable funding," asset categories are assigned an "available stable funding" (ASF) weight, with Tier 1 regulatory capital and Tier 2 capital instruments with a maturity of over one year receiving a 100% ASF weight, and trade date payables, certain short-term funding and certain short-term retail brokered deposits receiving a 0% ASF weight. The rule is aimed at reducing liquidity risk by ensuring that a covered institution retains sufficient liquid assets in the event of funding disruptions or a liquidity run in order to remain viable.

The rule would apply to (i) bank holding companies, certain savings and loan holding companies and depository institutions, in each case, having $250 billion or more in total consolidated assets or $10 billion or more in on-balance sheet foreign exposures, as well as to (ii) their depository institution subsidiaries having $10 billion or more in total consolidated assets. Less stringent requirements would also apply to bank holding companies and certain savings and loan holding companies having at least $50 billion, but less than $250 billion, in total consolidated assets. The effective date of the rule, as proposed, would be January 1, 2018.

Comments on the notice of proposed rulemaking are due by August 5, 2016.

The notice of proposed rulemaking is available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160503a1.pdf.

Federal Reserve Bank of New York President Proposes Providing Securities Firms with Access to Discount Window

On May 1, 2016, Federal Reserve Bank of New York President William Dudley delivered remarks at the Federal Reserve Bank of Atlanta 2016 Financial Markets Conference, focusing on the connection between liquidity and financial stability. Dudley first addressed market liquidity, noting that evidence that market liquidity has diminished is mixed. Turning to funding liquidity, Dudley emphasized the link between funding liquidity and capital requirements and asked whether more should be done to support funding liquidity. Dudley noted the importance of the availability of a lender-of-last resort, and remediating any gaps in the lender-of-last-resort function. As an example, Dudley noted the limited ability of the Federal Reserve Board to provide funding to a securities firm, even on a fully collateralized basis, and suggested that providing such firms with access to the Discount Window "might be worth exploring." Dudley also noted that the Bank for International Settlement's Committee on the Global Financial System is engaged in a project to determine what lender-of-last-resort gaps currently exist, focusing, in particular, on those that may create vulnerability in terms of financial stability. One area that he anticipates will receive considerable attention is whether there are any gaps with respect to the activities of globally systemic firms that operate on a cross-border basis. He also noted that greater attention needs to be paid to the appropriate role for the home- versus host-country supervisor and that the regulatory and supervisory responses for large, systemically-important firms that operate on a cross-border basis need to be closely coordinated, especially during times of stress. Dudley stressed that expectations about who will be the lender-of-last-resort need to be well understood in both the home and host countries.

President Dudley's speech is available at: https://www.newyorkfed.org/newsevents/speeches/2016/dud160501.

US Office of the Comptroller of the Currency Issues Guidance on Banks' Maintenance and Retention of Records and Examiner Access

On April 27, 2016, the OCC issued a bulletin reminding all OCC-supervised banks of their obligations to maintain and retain their records and the OCC's authority to obtain prompt and complete access to each bank's books and records and communicate freely with its employees, officers and directors. The guidance is being issued in response to the OCC's discovery that certain communications technology being made available to banks contains data deletion and encryption features which could inhibit the OCC's ability to access bank data and records. The guidance notes that the permanent deletion of internal communications is in conflict with the OCC's expectations for sound governance, compliance, risk management and safety and soundness principles.

The OCC guidance is available at: http://www.occ.gov/news-issuances/bulletins/2016/bulletin-2016-13.html.

US Federal Deposit Insurance Corporation Adopts Final Rule to Amend How Small Banks are Assessed for Deposit Insurance

On April 26, 2016, the FDIC approved a final rule that amends how banks with less than $10 billion in assets that have been insured for a minimum of five years are assessed for deposit insurance. The rule updates the data and revises the methodology that the FDIC uses to determine the risk-based assessments for such institutions. FDIC Chairman Martin J. Gruenberg anticipates that more than 93% of small banks will pay lower rates under the revised framework. The final rule will be used for rate determinations once the FDIC's insurance fund reaches 1.15%, but not before the third quarter of 2016.

The FDIC press release is available at: https://www.fdic.gov/news/news/press/2016/pr16032.html and the final rule is available at: https://www.fdic.gov/news/board/2016/2016-04-26_notice_dis_b_fr.pdf.

European Commission Requests European Banking Authority to Assist in its Review of EU Capital Requirements Regulation

On April 22, 2016, two letters from Olivier Guersent, DG FISMA of the European Commission, to Andrea Enria, Chairperson of the European Banking Authority, on issues associated with its review of the Capital Requirements Regulation were published. The first letter, dated April 12, 2016, was in response to the EBA's report on net stable funding requirements under the CCR. The EBA report concluded that NSFR standards developed by the Basel Committee on Banking Supervision fit well with the European banking framework but also flagged some European specificities. By the end of 2016, the Commission, if it deems appropriate, should submit a legislative proposal on the NSFR to the European Parliament and Council relying on the EBA Report when assessing the provisions of the Basel NSFR standard to ensure that a possible NSFR proposal does not hinder the financing of the real economy. The purpose of the letter is to request additional guidance on two areas of the EBA Report. First, with regards to the treatment of derivatives in the NSFR, the Commission is of the view that more specific analysis is required. The Commission expressed concern that the 20% required stable funding factor applied to gross derivatives liabilities and the recognition of margin received as compared to margin posts have not been comprehensively analyzed or subjected to the necessary extensive public consultation. Furthermore, the EBA should provide a complementary assessment on the impact of the provisions and an analysis of the impact on the treatment and calibration of derivatives.

The second area requiring further guidance concerns the effective application of the principle of "proportionality." The Commission has requested alternative policy proposals on implementing this principle, in particular, if the EBA could assess the benefits of lower and less frequent reporting requirements and the introduction of another metric such as a core stable funding ratio for institutions that have a low funding risk profile. The Commission has requested that the EBA provide any analysis by July 2016, to assist in the Commissions timetable for a possible legislative proposal to update the implementing technical standard on NSFR reporting.

The second letter, dated April 18, 2016, is a request for advice from the EBA in relation to the revision of the own fund requirements for market risk as part of the Commission's CRR review. The Commission is seeking technical advice to assist in its consideration of the impact of the agreed Basel Committee framework on minimum capital requirements for

market risk. In particular, advice from the EBA is required to assess, primarily through a quantitative assessment, the impact for EU banks adopting the Basel Committee framework.

The letter on the NSFR is available at: http://www.eba.europa.eu/documents/10180/1349330/Reply+from+Olivier+Guersent+DG+FISMA+on+EBA+report+on+NSFR.pdf/aac11003-bc6d-49f7-afbe-04495cab5c5d and the letter on market risk is available at: http://www.eba.europa.eu/documents/10180/1349330/Letter+from+Olivier+Guersent+DG+FISMA+on+CfA+CRR+Own+Fund+Requirement.pdf/5229cbdb-4b4b-4b24-ab53-f27079d0250f.

European Banking Authority Publishes First List of Other Systematically Important Institutions

On April 25, 2016, the EBA published the first list of Other Systematically Important Institutions in the European Union. O-SIIs are institutions which have been deemed by national regulators to be systematically relevant in addition to the Global Systematically Important Institutions that have already been identified. The EBA has compiled the list based on the findings of the relevant national regulators across the EU. National regulators relied on the EBA Guidelines on the identification of O-SIIs, which included recommended uniform criteria, including size, importance (substitutability or financial system infrastructure), complexity (or cross-border activities) and interconnectedness of such institutions. The EBA's guidelines on the identification of O-SIIs were developed in accordance with the Capital Requirements Directive and on the basis of internationally agreed frameworks established by the Financial Stability Board and the Basel Committee for Banking Standards. The EBA will publish an updated list of O-SIIs annually along with a revised definition of any CET1 capital buffer requirements set by national regulators.

The list of O-Slls is available at: http://www.eba.europa.eu/documents/10180/1443055/2015+O-SIIs+notified+to+the+EBA and the EBA's guidelines are available at: https://www.eba.europa.eu/documents/10180/930752/EBA-GL-2014-10+(Guidelines+on+O-SIIs+Assessment).pdf.

European Banking Authority Consults on Regulatory Technical Standards for Disclosure of Encumbered and Unencumbered Assets

On April 25, 2016, the EBA published a consultation paper on draft regulatory technical standards under the Capital Requirements Regulation on the disclosure of encumbered and unencumbered assets. The CRR requires the EBA to develop draft RTS to specify institutions' disclosure of balance sheet value per exposure class broken down by asset quality and the total amount of the balance sheet value that is unencumbered. The draft RTS sets out the data required to be disclosed on encumbered and unencumbered assets, the format, and the timing of the publication. The EBA has developed the draft RTS to take into account the European Systematic Risk Board recommendations, which stated that the EBA and regulators should monitor the level, evolution and types of asset encumbrance. The EBA published its first report analyzing asset encumbrance in September 2015. The report revealed that there had been no increase in levels of asset encumbrance over the past four years. The ESRB further recommended that the EBA issue guidelines and harmonized templates and definitions on transparency requirements for credit institutions on asset encumbrance. The EBA has defined asset encumbrance as pledging an asset or entering into any form of transaction to secure, collateralize or credit enhance any transaction form which it cannot be freely withdrawn. The draft RTS has been drafted by the EBA to provide transparent and harmonized information on asset encumbrances across EU member states based on a harmonized definition of encumbrance to enable market participants to compare the institutions in a clear and consistent manner. The draft RTS provides four disclosure templates and a box for narrative information to be completed by institutions about the importance of the encumbrance in their funding model. The EBA considers that disclosure by institutions on encumbrances is vitally important because it will enable market participants to better understand and analyze the liquidity and solvency profiles of institutions. Responses to the consultation are due by July 25, 2016.

The EBA press release is available at: http://www.eba.europa.eu/-/eba-consults-on-disclosure-of-encumbered-and-unencumbered-asse-1 and the EBA report on asset encumbrance is available at: http://www.eba.europa.eu/documents/10180/974844/EBA+Report+on+Asset+Encumbrance-+September+2015.pdf.

European Banking Authority Revised Technical Standards on Additional Collateral Outflows under the Capital Requirements Regulation

On May 3, 2016, the EBA published an Opinion on the European Commission's intention not to endorse final draft Regulatory Technical Standards on additional collateral outflows, prepared under the Capital Requirements Regulation. The final draft RTS, submitted to the Commission in March 2014, set out the materiality and the measurement of additional collateral outflows resulting from the impact of an adverse market scenario on a firm's derivatives transactions, financing transactions and other contracts. The technical standards are also a component of the liquidity coverage ratio for which the final standards came into force at the end of 2015.

The EBA's final draft RTS include a historical look-back approach (known as HLBA) method for calculating additional liquidity outflows corresponding to collateral needs resulting from the impact of an adverse market scenario on a firm's derivatives transactions, financing transactions and other contracts that was more conservative than that adopted by the Basel Committee on Banking Standards in April 2014. The European Commission, which delayed the assessment of the final draft RTS pending the adoption of the LCR RTS, requested the EBA to amend its final draft RTS on additional collateral outflows to align with the HBLA approach adopted by the Basel Committee on the basis that the liquidity outflows under the EBA's HBLA approach would be much higher for major players in the derivatives markets and that netting could be allowed as most collateral received by banks is in the form of cash or sovereign debt. The EBA agrees with the European Commission and has submitted revised final RTS to the Commission for endorsement.

The Opinion and revised RTS is available at: http://www.eba.europa.eu/documents/10180/1359456/EBA-Op-2016-08+Opinion+on+additional+collateral+outflows.pdf.

UK Regulator Consults on Reporting of Financial Statements and Forecast Capital Data

On April 29, 2016, the Prudential Regulation Authority published a consultation paper on regulatory reporting of financial statements, forecast capital data and IFRS 9 requirements, setting out the PRA's proposals on future reporting of balance sheet, statement of profit and loss and forecast capital data. The consultation paper is relevant to PRA-authorized banks, building societies and designated investment firms. It also outlines proposals for reporting of P&L data by non-EEA banks that are authorized to accept deposits through a branch in the United Kingdom. The proposals are part of the PRA's execution of its strategy for the collection of valid, accurate and meaningful information, including a review of reporting requirements to assist the PRA in gaining the information required to engage in judgment-based supervision. Balance sheet and P&L data assist the PRA in its macro-prudential and monetary policy analysis. Responses to the consultation are due by July 29, 2016.

The consultation paper is available at:
http://www.bankofengland.co.uk/pra/Documents/publications/cp/2016/cp1716.pdf.

Basel Committee on Banking Supervision Publishes Pre-announced Jurisdiction Buffer Decisions

On April 21, 2016, the Basel Committee on Banking Supervision published a list of jurisdiction specific pre-announced buffer decisions. In December 2010, the Basel Committee published Basel III: a global regulatory framework for more resilient banks and banking systems. As required under Basel III, this document outlines details of global regulatory standards on bank capital adequacy and liquidity, including a countercyclical buffer.

The countercyclical buffer regime will be phased-in in accordance with the capital conservation buffer between January 1, 2016, and December 31, 2018 becoming fully effective on January 1, 2019. To assist in bank compliance, jurisdictions can pre-announce buffer levels when raising the countercyclical buffer up to 12 months in advance. A jurisdiction may also announce a decrease in the requisite countercyclical buffer, the effect of which is immediate. The list includes all Basel Committee member jurisdictions, their pre-announced buffer decisions, and the current buffers in

place. Jurisdictions include Argentina, China, France, India, Indonesia and the United Kingdom. The updated list also includes buffer information on the non-member jurisdiction Norway.

The list is available at: http://www.bis.org/bcbs/ccyb/index.htm

Erratum to Consultation on Basel III Leverage Ratio Framework Published

On April 25, 2016, the Basel Committee on Banking Supervision published an erratum to its April 2016 consultation paper on proposed revisions to the Basel III leverage ratio framework. The proposals contained in the consultation paper include amendments to: (i) the measurement of derivative exposures by adopting a modified version of the standardized approach for measuring counterparty credit risk exposures; (ii) treatment of regular-way purchases and sales of financial assets so as to achieve consistency across accounting standards; (iii) treatments of provisions; and (iv) credit conversion factors for off-balance sheet items, by aligning them with the standardized approach to credit risk. In addition, the Basel Committee proposes to impose additional requirements on global systemically important banks, setting out various options, including whether the additional requirement should apply uniformly to all G-SIBs or be tailored and whether the form should be a higher minimum requirement or a buffer requirement. Responses to the consultation are still required by July 6, 2016. The Basel Committee intends to finalize the revised leverage ratio requirement in 2016 so as to allow time for its implementation by January 1, 2018.

The erratum is available at: http://www.bis.org/bcbs/publ/d365_errata.pdf and the amended consultation paper is available at: http://www.bis.org/bcbs/publ/d365.pdf.

Compensation

US Federal Agencies Issue Proposed Rule to Implement Incentive-Based Compensation Restrictions

On April 21, 2016, the National Credit Union Administration re-proposed a rule that would establish incentive-based compensation restrictions on certain financial institutions. The OCC, the FDIC and the Federal Housing Finance Agency followed with their own versions of the proposed rule on April 26, 2016, and the Federal Reserve Board approved its version of the rule on May 2, 2016. The OCC, FDIC, FHFA and Federal Reserve Board proposed rules are substantially similar to the NCUA proposal. The proposed rule, issued pursuant to Section 956 of the Dodd-Frank Act, will ultimately take the form of a joint rulemaking among these agencies and the Securities and Exchange Commission, and replaces an earlier proposal issued in 2011.

The proposed rule applies to "covered institutions", defined generally to mean financial institutions with total consolidated assets greater than or equal to $1 billion. Covered institutions are divided into three tiers, based on asset size, with the most stringent requirements, including requirements that incentive-based compensation arrangements for certain persons include deferred payments, risk of downward adjustment and forfeiture, and clawbacks, applying to the largest institutions (those having total consolidated assets greater than or equal to $250 billion). The revised proposal would prohibit incentive-based compensation arrangements for all covered institutions that encourage inappropriate risks by providing excessive compensation or that could lead to a material financial loss for the covered institutions. The proposed rule clarifies that compensation, fees and benefits will be considered "excessive" when amounts paid are unreasonable or disproportionate to the value of the services performed by a covered person, taking into account all relevant factors. Further, the board of directors of each covered institution would be required to conduct oversight of the institution's incentive-based compensation program and approve incentive-based compensation arrangements for senior executive officers. Additionally, all covered institutions would be required to create and maintain records demonstrating compliance with the proposed rule.

In a statement issued together with the OCC's approval of the proposed rule, Comptroller of the Currency Thomas J. Curry stated that the rule seeks to re-align compensation incentives with a financial institution's risk profile, and to discourage unsound practices by executives.

Comments on the proposed rule are due by July 22, 2016. The proposed rule would take effect no later than the beginning of the first calendar quarter that begins at least 540 days after a final rule is published in the Federal Register.

The full text of the Federal Reserve Board's proposed rule is available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160502a2.pdf, the full text of the OCC's proposed rule is available at: http://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-49a.pdf and Comptroller Curry's statement is available at: http://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-49.html.

The full text of the FDIC's proposed rule is available at: https://www.fdic.gov/news/board/2016/2016-04-26_notice_dis_a_fr.pdf.

The full text of the FHFA's proposed rule is available at: https://www.fhfa.gov/SupervisionRegulation/Rules/RuleDocuments/Incentive-Based%20Compensation%20NPR_4-26-16.pdf.

The full text of the NCUA's proposed rule is available at: https://www.ncua.gov/About/Documents/Agenda%20Items/AG20160421Item2b.pdf.

Credit Ratings

European Securities and Markets Authority Update on Credit Rating Agency Reporting

On April 27, 2016, the European Securities and Markets Authority published an update on reporting obligations in relation to information on structured finance instruments which ESMA receives under the Credit Rating Agency Regulation. The CRA Regulation was originally based on the Code of Conduct Fundamentals for CRAs published by the International Organization of Securities Commissions. ESMA is required under the CRA Regulation to set up a website where information on SFIs can be published to enable reporting entities—originators, issuers and sponsor entities—to submit data files containing the relevant information in accordance with their reporting requirements. EMSA is required to issue technical instructions by July 1, 2016, to assist with the reporting obligations that will apply from July 1, 2017. ESMA has reported that it will not be in a position to receive information on SFIs from reporting entities by January 1, 2017, as it is currently unable to set up a website or issue the technical instructions. This is because there is no legal basis for funding the website. ESMA expects the new securitization legislation currently being finalized to provide clarity on the future obligations regarding reporting on SFIs.

The update is available at: https://www.esma.europa.eu/press-news/esma-news/esma-update-reporting-structured-finance-instruments-information-under-cra.

Derivatives

US Commodity Futures Trading Commission Approves Final Rule on Amendments to the Swap Portfolio Reconciliation Requirement

On May 2, 2016, the Commodity Futures Trading Commission approved a final rule to amend a requirement found in CFTC Regulation 23.500(i) that swap dealers and major swap participants exchange the terms of swaps with their counterparties for portfolio reconciliation so that SDs and MSPs need only exchange the "material terms" of swaps. The final rule also amends the definition of "material terms" in CFTC Regulation 23.500(g). The final rule benefits SDs, MSPs, and their counterparties by allowing them to focus on reconciling data fields that impact swap valuation and counterparty obligations, without impairing the CFTC's ability to oversee and regulate the swaps markets.

The CFTC press release is available at: http://www.cftc.gov/PressRoom/PressReleases/pr7365-16 and the final rule is available at: http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/federalregister050216.pdf.

US Commodity Futures Trading Commission Signs Memorandum of Understanding with Canadian Provinces on Cross-Border Supervision

On April 20, 2016, CFTC Chairman Timothy Massad and authorities for three Canadian provinces signed a March 2014 Memorandum of Understanding regarding (i) cooperation and coordination between the jurisdictions in respect of derivatives and securities markets and (ii) the exchange of information with respect to the supervision and oversight of regulated entities that operate on a cross-border basis in the United States and in Canada. Chairman Massad executed counterparts to the MOU along with the chairs of regulatory authorities of the provinces of New Brunswick, Saskatchewan and Nova Scotia. The MOU covers markets and organized trading platforms, central counterparties, trade repositories, and intermediaries, dealers and other market participants. Specifically, the MOU is intended to protect investors and customers, foster the integrity of financial markets and reduce systemic risk. The MOU previously only covered coordination between the CFTC and Alberta, British Columbia, Ontario and Quebec.

The CFTC press release is available at: http://www.cftc.gov/PressRoom/PressReleases/pr7364-16 and the Memorandum of Understanding is available at: http://www.cftc.gov/idc/groups/public/@internationalaffairs/documents/file/asc-bcsc-osc-amfmou032514.pdf.

EU Legislation Amends Margin Period of Risk for Client Accounts

On April 21, 2016, a Commission Delegated Regulation, which amends Regulatory Technical Standards on the time horizons for liquidation of different classes of financial instruments, was adopted by the European Commission. Under EMIR, central counterparties are required to call and collect adequate initial margins to cover the risk stemming from a cleared contract. The proposed delegated regulation amends the margin period of risk for clients for EU CCPs from a two-day period for clients' accounts (as under the original RTS) to a one-day gross basis. EU CCPs will therefore be able to offer both a two-day net margin model and a one–day gross margin model. The delegated regulation will come into force twenty days following publication in the Official Journal of the European Union.

The delegation regulation is available at: https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2302-EN-F1-1.PDF.

You might like to view our client note: http://www.shearman.com/~/media/Files/NewsInsights/Publications/2015/12/U-Clearing-Obligation-for-Interest-Rate-Swaps-Set-for-June-2016-FIAFR-12.pdf.

EU Legislation Imposing Clearing Obligation for Credit Default Swaps Published

On April 19, 2016, a Commission Delegated Regulation on central clearing for credit default swaps supplementing the European Markets Infrastructure Regulation was published in the Official Journal of the European Union. Under the Regulation, two classes of credit default over-the-counter derivatives are subject to the clearing obligation under EMIR: iTraxx Europe Main and iTraxx Europe Crossover. The Regulation also specifies four categories of counterparties subject to clearing obligations under EMIR and the corresponding dates on which the obligations take effect: (i) counterparties which are clearing members for at least one of the two aforementioned classes of OTC derivatives, of at least one of the central counterparties authorized or recognized before February 9, 2017, to clear at least one of those classes; (ii) counterparties (financial or alternative investment funds that are non-financial counterparties) not included in category (i) who have an aggregate month-end average of outstanding gross notional amount of non-centrally cleared derivatives above EUR 8 billion; (iii) counterparties (financial or alternative investment funds that are non-financial counterparties) that are not included in either (i) or (ii); and (iv) non-financial counterparties that do not belong to any of the above categories. Category (i) and (ii) obligations take effect on February 9, 2017, category (iii) obligations take effect on February 9, 2018, and (iv) obligations take effect on February 9, 2018 and May 9, 2019 respectively. Where a derivative contract concluded between two counterparties is included in different categories of counterparties, the date from which the clearing obligation takes effect for the contract shall be whichever is the later date. The Regulation also

outlines the minimum remaining maturity for the different categories of counterparties. The Regulation will enter into force on May 9, 2016.

The Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.103.01.0005.01.ENG&toc=OJ:L:2016:103:TOC.

Financial Crime

UK Government Action Plan for Anti-Money Laundering and Counter-Terrorist Finance

On April 21, 2016, the UK Government published an Action Plan for anti-money laundering and counter terrorism financing. The Government is aiming to overhaul the UK approach to AML and CTF by giving new capabilities and legal powers to law enforcement agencies, improving the effectiveness of the supervisory regime and addressing inconsistencies in the regime, improving information sharing between the public and private sectors and increasing the international reach of the UK law enforcement agencies and enhancing international information sharing. The Government published a Call for Information on the system of appointing supervisors for AML and CTF and the powers of supervisors to incentivize compliance and adoption of the risk-based approach. An annex to the Action Plan includes proposed legislative changes. The Action Plan includes a list of deliverables which includes the involvement of the Home Office, the National Crime Agency, HM Treasury and the British Bankers' Association. The shorter term deliverables include running the pilot Joint Money Laundering Intelligence Taskforce, which provides for information sharing between banks and the NCA, on a permanent basis, creating a register of banks' specialisms, exploring new powers to tackle money laundering and completing the review of the supervisory regime. Responses to the Call for Information and the consultation on legislative proposals should be submitted by June 2, 2016.

The Action Plan is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517993/6-2118-Action_Plan_for_Anti-Money_Laundering__print_.pdf, the Call for Information on the AML Supervisory Regime is available at: https://www.gov.uk/government/consultations/call-for-information-anti-money-laundering-supervisory-regime/call-for-information-anti-money-laundering-supervisory-regime and the consultation paper on legislative proposals is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/518016/Action_Plan_for_Anti-Money_Laundering_-_Annex_A.PDF.

UK Financial Conduct Authority Consults on Changes to Implement the Market Abuse Regulation

On April 22, 2016, the Financial Conduct Authority published its proposed changes to the Decision Procedure and Penalties Manual and the Enforcement Guide for implementation of the Market Abuse Regulation. The MAR will apply directly across the EU from July 3, 2016. The FCA must amend and update its rules and guidance to bring them in line with MAR. The FCA's proposals are based on draft secondary legislation which HM Treasury is expected to lay before Parliament in the coming weeks. The draft secondary legislation will, amongst other things, amend the scope of the FCA's powers to impose financial penalties and public censure as well as giving the FCA additional powers to impose sanctions for breaches of MAR or any of its underlying legislation. The new powers include the power to prohibit an individual from carrying out a management function or dealing in financial instruments on their account. The FCA has already consulted on amendments to its Handbook, including the Market Conduct handbook and the disclosure and transparency rules. Policy statements on those proposals are expected soon. The current consultation closes on May 22, 2016. The FCA intends to publish the policy statement in June 2016.

The consultation paper is available at: http://www.fca.org.uk/static/documents/consultation-papers/cp16-13.pdf.

UK Regulator Publishes Final Rules Implementing the Market Abuse Regulation

On April 28, 2016, the FCA published a Policy Statement, including final rules on changes to the FCA Handbook required to implement the Market Abuse Regulation. MAR will apply directly across the EU from July 3, 2016, replacing the current Market Abuse Directive. Some of the changes to the FCA rules reflect MAR's direct application in the UK. In contrast, the Market Abuse Directive will need to be transposed into national law, including the FCA Handbook. The FCA rules need to be amended to either refer directly to MAR (e.g. for definitions) or to reflect the position under MAR. For example, MAR requires, amongst other things, issuers to provide an explanation for a delay in the disclosure of inside information under certain circumstances. The FCA's rules will require such notification to be made in writing when requested.

The new FCA rules will apply from July 3, 2016. However, the FCA does note that some changes may be required depending on the final version of the EU technical standards due under MAR.

The Policy Statement is available at: http://www.fca.org.uk/static/fca/documents/policy-statements/ps16-13.pdf.

Financial Market Infrastructure

Federal Reserve Bank of New York President Discusses Challenges of Cross-Border Regulation

On April 18, 2016, New York Fed President William Dudley discussed the importance to the global economy of economic growth and prosperity in the United States and the European Union. He applauded progress that has been made to date towards strengthening global banking systems, including increased capital and liquidity standards for international banks. However, he noted that more needs to be done in order to solve the so-called "too big to fail" problem. Specifically, Dudley stated that impediments to an orderly cross-border resolution need to be fully identified and dismantled, and cross-border regulatory cooperation needs to be further enhanced, including through greater exchange of confidential supervisory information. Moreover, he noted the importance of establishing a level playing field across jurisdictions in respect of cross-border resolution, so that the regulatory focus would be on safety and soundness rather than "trying to protect, favor, or shield national champions."

President Dudley's speech is available at: https://www.newyorkfed.org/newsevents/speeches/2016/dud160418.

European Securities and Markets Authority Makes Recommendations after First EU-Wide Stress Test of Central Counterparties

On May 3, 2016, The ESMA published the results of its first EU-wide stress test for central counterparties, including recommendations for improving CCPs' internal methodologies. ESMA must perform an annual stress test of all EU CCPs under the European Market Infrastructure Regulation. The exercise tested 17 European CCPs which held over €150 billion worth of default resources with more than 900 clearing members across the EU. The purpose of the stress test is to test the resilience and safety of the European CCP sector and identify any possible vulnerabilities, focusing on CCP credit risk when faced with multiple clearing member defaults and simultaneous price shocks. The results indicate that CCP resources are generally sufficient to cover losses resulting from the default of two EU-wide clearing member groups combined with historical and hypothetical market stress scenarios. However, under more severe stress scenarios, CCPs were faced with sector-wide residual uncovered losses varying from €0.1 billion to €4 billion. ESMA recommends that CCP internal methodologies can be improved by CCPs incorporating into their creditworthiness assessments of clearing members, the potential exposures their clearing members may face due to their membership in other CCPs and that regulators should ensure that CCPs revise the price shocks used in their internal stress test methodologies where the stress price shocks applied by CCPs were identified as not being as conservative as the minimum price shocks or as extreme as the most severe historical shocks.

The results of the stress test, including Q&A, are available at: https://www.esma.europa.eu/press-news/esma-news/esma-publishes-results-eu-central-counterparties-stress-test.

Financial Services

US Securities and Exchange Commission Adopts Amendments to Implement Provisions of the Jumpstart Our Business Startups Act and Fixing America's Surface Transportation Act that Revise Exchange Act Registration Requirements

On May 3, 2016, the SEC approved amendments to revise the rules related to the thresholds for registration, termination of registration and suspension of reporting under Section 12(g) of the Securities Exchange Act of 1934. These amendments implement provisions of the Jumpstart Our Business Startups Act (JOBS Act) and the Fixing America's Surface Transportation Act (FAST Act).

To implement the JOBS Act, the SEC proposed amendments to Exchange Act Rules 12g-1 through 4 and 12h-3 to reflect the new thresholds. The SEC also proposed to establish thresholds for savings and loan holding companies consistent with those for bank holding companies, as well as to revise the definition of "held of record" in Exchange Act Rule 12g5-1.

Subsequent to the SEC's proposed amendments, the FAST Act revised the thresholds for savings and loan holding companies and the statutory changes were effective upon enactment of the Act. The final rules will become effective 30 days after publication in the Federal Register.

The SEC press release is available at: http://www.sec.gov/news/pressrelease/2016-81.html and the final rule is available at: http://www.sec.gov/rules/final/2016/33-10075.pdf.

US Securities and Exchange Commission Seeks Public Comment on Plan to Establish Consolidated Audit Trail

On April 27, 2016, the SEC released a plan for a proposed national market system that would create a single database, the Consolidated Audit Trail, to track all US activity in the equity and options markets. The establishment of the CAT will allow regulators to be better positioned to identify and investigate market misconduct, and will increase the effectiveness of market research and monitoring. The CAT would be conducted through a Delaware limited liability company that the self-regulatory organizations would own jointly, and participating self-regulatory organizations and the SEC would have access to the data in the CAT for regulatory and oversight purposes. The plan sets out the record keeping and reporting information that SROs and broker-dealers would be required to submit at various stages in the lifecycle of an order or transaction. Public comments on the plan are due within 60 days of the plan's publication in the Federal Register.

The SEC press release and fact sheet is available at: https://www.sec.gov/news/pressrelease/2016-77.html.

European Commission to Promote Crowdfunding under Capital Markets Union

On May 3, 2016, the European Commission announced that it would not, at this stage, be proposing legislation to regulate crowdfunding. The Commission pledged to report on whether crowdfunding should become regulated at EU-level as part of its Capital Markets Union Action Plan. The CMU aims, amongst other things, to broaden funding sources for small and medium sized enterprises as crowdfunding has become an important source for such funding. The European Commission has assessed national regimes and best practice across the EU and found that the crowdfunding sector is currently fairly small and is concentrated locally. Some Member States have implemented local rules to regulate the sector. However, the European Commission found that the outcomes are generally aligned and that national regimes aim to protect investors whilst allowing the development of this source of funding. However, the Commission noted that the sector is changing rapidly so it will continue to monitor the sector and assess whether regulation is required in the future to harmonize the approaches taken across the EU and ensure investor protection.

The Commission's press release is available at: http://europa.eu/rapid/press-release_IP-16-1647_en.htm?locale=en and the report is available at: http://ec.europa.eu/finance/general-policy/docs/crowdfunding/160428-crowdfunding-study_en.pdf.

European Commission Assesses Progress on Capital Markets Union

On April 25, 2016, the European Commission published a status report on progress made since the adoption of the Capital Markets Union Action Plan. The European Commission's Action Plan, published in September 2015, set out the steps for the medium and long term in five priority areas: (i) providing more funding choices to EU businesses; (ii) ensuring an appropriate regulatory framework for long term investment and financing of Europe's infrastructure; (iii) increasing investment and choices for retail and institutional investors; (iv) improving bank lending capacity; and (v) removing cross-border barriers and developing more harmonized capital markets for all Member States. The Commission's Status Report details the actions taken to date, the key steps planned for the rest of 2016 and measures that will be delivered in 2017-18.

The Status Report is available at: http://ec.europa.eu/finance/capital-markets-union/docs/cmu-first-status-report_en.pdf and the Action Plan is available at: http://ec.europa.eu/finance/capital-markets-union/docs/building-cmu-action-plan_en.pdf.

HM Treasury Consults on Legislation for Secondary Annuities Market

On April 21, 2016, HM Treasury published a consultation paper on the UK Government's proposed secondary market due to be introduced in April 2017. The market would extend the recently introduced pension freedoms and flexibilities to individuals, who retired prior to April 2015. In December 2015, the Government announced that tax changes would come into effect from April 2017 which would allow individuals to receive all of the proceeds following the sale of an annuity as a taxable lump sum, arrange for the buyer to pay all of the proceeds into a flexi-access drawdown fund, or arrange for the proceeds to be used to buy a new 'flexible' annuity. The consultation invites comment on the draft secondary legislation which creates (i) new specified activities for firms intending to purchase annuities or act as intermediaries in the secondary market; and (ii) a new specified activity for annuity providers who are intending to buy back annuities that have been issued. The consultation also discusses proposed amendments to the Appointed Representative Regulations which would exempt appointed representatives, acting under the responsibility of an authorized principal, from needing regulatory authorization to act as intermediaries in the secondary market and to buy back annuities. The consultation also proposes amendments to the By Way of Business Order to make clear that those buying rights to annuity income streams will be subject to the requirements to be authorized or exempt under the Financial Services and Markets Act 2000 and the Regulated Activities Order. HM Treasury stated that regulation of the specified secondary market activities will enhance the FCA's supervisory oversight in this area. Responses to the consultation are due by June 2, 2016.

The consultation paper is available at: https://www.gov.uk/government/consultations/creating-a-secondary-market-for-annuities-secondary-legislation/consultation-creating-a-secondary-market-for-annuities-secondary-legislation.

UK Regulator Consults on Regulation of Secondary Annuity Market

On April 21, 2016, the FCA published a consultation paper on its proposed rules and guidance for the secondary annuity market due to start in April 2017. The consultation is aimed at parties interested in pensions and retirement issues, including providers and distributors of annuities, retirement income and planning products, sponsors of occupational Defined Benefit and Defined Contribution Schemes and firms providing advice in this area. The consultation discusses how consumers will be able to sell their annuity incomes on the secondary market. The changes proposed will primarily affect consumers who hold or will hold annuities in their name and contingent beneficiaries with an interest in such annuities.

The secondary market is part of the UK Government's newly introduced pension freedoms for individuals accessing their pension savings. In December 2015, the Government announced tax changes effective April 2017 that would allow individuals selling an annuity to (i) receive all sale proceeds as a taxable lump sum; (ii) have the proceeds transferred into a flexi-access drawdown fund; or (iii) arrange for the proceeds to be used to buy a new 'flexible' annuity. The

changes proposed in the consultation are designed to help ensure adequate consumer protection whilst promoting effective competition in the interest of consumers. The FCA has proposed that brokers must outline upfront the charges associated with selling a consumer's annuity and must ensure the consumer consents to such charges, as opposed to receiving the charges as paid commission from firms acting as buyers. To help consumers estimate the value of their annuity income, the FCA has proposed that buyers and brokers making an offer for a seller's annuity income will be required to present their offer alongside the 'replacement cost' of the annuity income. The proposed rule changes also require firms to recommend to the seller that they seek regulated advice or guidance from Pension Wise and outline any annuity specific risk warnings. Responses to the consultation are due by June 21, 2016.

The Consultation Paper is available: https://www.fca.org.uk/your-fca/documents/consultation-papers/cp16-12.

UK Regulator Proposes Improvements to UK's Wholesale Debt Listing Regime

On April 27, 2016, the FCA, in its capacity as securities listing authority, published a report on proposed changes to improve the UK's wholesale debt listing regime. The report comes following an initiative launched by the FCA, the UK Debt Market Forum, where a series of meetings were held stakeholder groups of the UK primary debt capital markets. The purpose of the Forum was to seek expert feedback to assist the FCA in developing practical measures to increase the effectiveness of the UK's primary listed debt markets without negatively impacting current standards. The report outlines proposed measures that the FCA has implemented following the feedback received. The FCA has proposed an extension of its "Wholesale Debt Approach." The approach is a risk-focused methodology designed specifically for the review of wholesale debt documents and aimed at ensuring that the FCA targets the most significant areas of risk. The proposal will see the scope of documents reviewed broadened. The FCA has proposed an extension of its "Same Day Service." The FCA intends to handle most routine supplemental prospectuses and listing particulars on the day that they are submitted. The report outlines the FCA's intention to consult on new guidance on omitting guarantor financial information. The FCA will consult on a more transparent approach to assessing whether certain types of financial information may be omitted from debt listing documents to bring the FCA's approach in line with other EU regulators. The FCA also intends to improve dialogue with market participants through a new engagement strategy, the FCA's Debt Market Relationship Programme, this will provide advisers who frequently interact with the FCA with a dedicated relationship manager. An additional new enquiry service will also be implemented to address the concerns of less frequently engaged advisers. The FCA's new engagement strategy is aimed at reducing the 'red tape' costs associated with submitting queries. The report outlines the FCA's new initiative to provide targeted services to prospective overseas issuers considering listing debt in the UK, the Early Engagement Team. The Early Engagement Team is to provide technical advice and practice assistance to prospective issuers who may be less familiar with the UK and EU listing regimes. The FCA expects the new service to produce a smoother, cost effective, better informed and transparent process for issuers seeking a first time listing. The report explores the FCA's idea of supplementing the UK's debt market offering with new whole sale debt multilateral trading facilities. The Forum did not finalize proposals as to what the UK's multilateral trading facility debt offering should be. The FCA will focus on this proposal in a future review of the broader listing regime.

The report is available at: http://www.fca.org.uk/static/documents/practical-measures-improve-effectiveness-uk-primary-listed-debt-markets.pdf.

FinTech

UK Government Consults on Draft Innovation Plan for Financial Services

On April 22, 2016, the UK Government launched a consultation on a draft innovation plan for financial services. The innovation plan covers the work of each of the financial services regulators—the FCA, the Payment Systems Regulator, the PRA and the Bank of England—setting out the steps that each regulator has taken or intends to take to adapt to new

technologies and disruptive business models to encourage competition and growth and to better utilize technologies to reduce burdens on business and create efficiency savings. The consultation seeks feedback on the UK's regulatory environment for financial services supporting innovation, whether the regulators understand innovation and where new technologies might emerge, if there are any gaps that the regulators should focus on and if there are ways that the regulators could better utilize technologies. Responses are requested by May 6, 2016.

The consultation page is available at: https://www.gov.uk/government/consultations/consultation-on-draft-innovation-plan-for-financial-services/consultation-paper-on-draft-innovation-for-financial-services.

Funds

US Treasury Secretary Addresses Potential Risks from Asset Management Products and Activities at Financial Stability Oversight Council Meeting

On April 18, 2016, US Treasury Secretary and chairman of the Financial Stability Oversight Council, Jacob Lew, provided remarks at a meeting of the FSOC regarding the release of the FSOC's review of the asset management industry. The statement released by the FSOC is not a rulemaking but rather, reflects the assessment of the FSOC on key areas of focus and risk in the asset management industry. Lew highlighted two key findings that are the focus of the statement—liquidity and leverage risk. With respect to liquidity, the FSOC found that financial stability concerns may arise from liquidity and redemption risks in pooled investment vehicles, including mutual funds in particular. The statement includes a number of policy recommendations for mitigating such risks, including the implementation of robust liquidity management practices and disclosures for mutual funds, and clearer guidelines that would limit a fund's ability to hold assets having limited liquidity. With respect to leverage, Lew's statement notes that while leverage does not generally appear high in all hedge funds, risk may still be present in these funds. He stated that regulators need to better understand the risks being taken by such funds and to engage in further analysis and information sharing in order to reach conclusions as to whether the use of leverage by private funds presents significant financial stability risk.

Deputy Assistant Secretary Patrick Pinschmidt also delivered remarks, adding that the FSOC is creating an interagency working group that will share and analyze relevant regulatory information in order to better understand hedge fund activities and potential risks to financial stability. He also highlighted other key areas addressed in the FSOC's statement, including operational risks, securities lending and resolution and transition planning.

Treasury Secretary Lew's statement is available at: https://www.treasury.gov/press-center/press-releases/Pages/jl0430.aspx, Deputy Assistant Secretary Pinschmidt's statement is available at: https://www.treasury.gov/press-center/press-releases/Pages/jl0439.aspx and the FSOC's Update on Review of Asset Management Products and Activities is available at: https://www.treasury.gov/initiatives/fsoc/council-meetings/Documents/Financial%20Stability%20Oversight%20Council%20Releases%20Statement041816.pdf.

Shearman & Sterling's client publication regarding the FSOC report is available at: http://www.shearman.com/~/media/Files/NewsInsights/Publications/2016/04/US-Financial-Stability-Oversight-Council-Focuses-on-Asset-Management-Products-and-Activities-AM-042616.pdf.

MiFID II

European Securities and Markets Authority Proposes Amended MiFID II Standards on Non-Equity Transparency and Position Limits

On May 2, 2016, the ESMA published two Opinions proposing amendments to two of its draft Regulatory Technical Standards under the Markets in Financial Instruments Directive and the Markets in Financial Instruments Regulation, together known as MiFID II. In September 2015, ESMA submitted the two final draft RTS to the European

Commission for endorsement. In April 2016, the Commission requested ESMA to amend each of the final draft RTSs. ESMA's opinions are in response to the Commission's request.

The first Opinion is on the revision of the draft RTS on non-equity transparency. MiFID II extends transparency requirements in MiFID I from equities to other products such as bonds, structured finance products, emission allowances and derivatives. The Commission requested ESMA to revise the draft RTS to phase-in the application of certain parts of the new transparency regime so as to mitigate possible liquidity risks to bond markets, proposing a four year period and suggesting that the annual phase-in requirements would depend on the results of annual liquidity testing. ESMA has instead proposed an automatic phase-in, prescribing the stages in the revised draft RTS. Following each annual phase-in, ESMA would conduct an assessment of the impact of the provisions on bond market liquidity and on the activities of liquidity providers and the phase-in parameters would only be amended in the event of significant negative impacts on liquidity. In addition, ESMA has proposed that newly issued corporate and covered bonds would be subject to a more cautious transparency regime and proposes increasing the issuance size thresholds.

The second Opinion is on the revision of the final draft RTS on the methodology for the calculation and application of position limits for commodity derivatives. MiFID II will introduce positions limits, or caps, on the number of commodity contracts that can be held. These will apply based on technical standards for calculating limits on commodity derivatives traded on trading venues and economically equivalent over the counter contracts. The Commission has requested amendments to ESMA's final draft RTS to remove issues associated with commodity derivatives that have an agricultural underlying, the methodology in cases where deliverable supply and open interest of a contract differ significantly and the definition of contracts which are traded "OTC only" so that they can be considered as economically equivalent to contracts traded on a trading platform. ESMA largely agreed with the recommended changes and proposed to lower the position limits for derivatives based on food stuffs. ESMA has also suggested that where deliverable supply and open interest diverge significantly, the other months' position limits should be adjusted accordingly. ESMA finally proposed a wider definition of "OTC only" contracts to prevent circumventions of the position limits regime.

The Opinions and the revised RTS are available at: https://www.esma.europa.eu/press-news/esma-news/esma-amends-mifid-ii-standards-non-equity-transparency-and-position-limits.

The Commission's request for amendments to draft RTS on non-equity transparency is available at: http://ec.europa.eu/finance/securities/docs/isd/mifid/160420-letter-to-esma-rts-02_en.pdf.

The Commission's request for amendments to draft RTS on position limits is available at: http://ec.europa.eu/finance/securities/docs/isd/mifid/160420-letter-to-esma-rts-21_en.pdf.

European Commission Requests Amendments to Draft Technical Standards on Ancillary Activities under MiFID II

On April 22, 2016, the European Commission published a letter rejecting ESMA's draft technical standards on ancillary activities and further requesting amendments in accordance with the Markets in Financial Instruments Directive II. The letter concerns ESMA's draft RTS on the criteria to establish when an activity is considered to be ancillary to the main business. MiFID II exempts persons dealing on own account or providing investment services to clients in commodity derivatives provided that, amongst other things, it is an activity that is ancillary to their main business and that the main business is not the provision of investment services or banking services. The RTS lays down two tests which are required to be met in order for an activity to be considered ancillary, the market share test and the main business test. The Commission rejected the draft RTS because ESMA's proposal for the main business test on the basis of total turnover as a proxy to commercial activity could result in an overly restrictive application of the test. The Commission concluded that the proposed ESMA trading ratio for determining an appropriate test for all cases and for all groups potentially affected by the ancillary activities test is not appropriate. The Commission suggested that the proposed main

business test should be broadened to include a wider range of factors when determining the extent to which activities constitute a minority of activities at a group level.

The letter on ancillary activities to main business is available at: http://ec.europa.eu/finance/securities/docs/isd/mifid/160420-letter-to-esma-rts-20_en.pdf.

EU Technical Standards on Requirements for Investment Firms under MiFID II Adopted by the European Commission

On April 25, 2016, the European Commission adopted a Delegated Regulation supplementing the Markets in Financial Instruments Directive with regard to organizational requirements and operating conditions for investment firms. The adopted Delegated Regulation outlines specific organizational requirements for investment firms performing investment services and ancillary services. In particular, the adopted Delegated Regulation provides procedures for compliance, risk management, complaints handling, personal transactions, outsourcing and conflicts of interest as well as the additional organizational requirements for underwriting and placing services and the production and dissemination of investment research. The adopted Delegated Regulation outlines the operating conditions for investment firms. It also specifies the rules which an investment firm must comply when providing services or ancillary services to clients. For example, it requires information to be provided to clients and potential clients on the costs and charges associated with investment services and financial instruments. The adopted Delegated Regulation further specifies that information, which is to include an explanation of the risks arising from the insolvency of the issuer and related events, such as a bail in, must also be provided.

The adopted Delegated Regulation also specifies operating obligations for trading venues, including the circumstances where a removal or suspension of a financial instrument from trading would cause significant damage to investors' interests and the conditions for position reporting of commodity derivatives, in particular, when an aggregate commitment of traders report shall be published on a specific commodity derivative, emission allowance or derivative.

The adopted Delegated Regulation provides guidance on data provision obligations for reporting service providers. The transparency framework under MiFID II, reporting services providers are required to provide market data on a reasonable commercial basis. The final chapter provides guidance for regulators when determining whether the operations of a multilateral trading facility or organized trading facility are of substantial importance to a host member state, specifying the consequences of that status, to reduce the likelihood of a trading venue being subject to regulation by more than one regulator where otherwise there would be no such obligation. The adopted Delegation is subject to approval by the European Parliament and the Council of the European Union.

The Delegated Regulation is available at: https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2398-EN-F1-1.PDF.

Recovery & Resolution

US Federal Reserve Board Proposes Rule on Close-Out of Qualified Financial Contracts Involving Large, Complex Financial Firms

On May 3, 2016, the US Federal Reserve Board proposed a rule to support US financial stability by enhancing the resolvability of large, complex financial firms. The proposed rule would require US global systemically important banking institutions and the US operations of foreign GSIBs to amend certain bilateral, uncleared qualified financial contracts, including derivatives, repurchase agreements, reverse repurchase agreements and securities lending and borrowing agreements, to prohibit the immediate cancellation of such contracts and the exercise of certain other default rights by counterparties if the firm enters bankruptcy or a resolution proceeding. Under the proposal, GSIBs may comply by using QFCs that are modified by the International Swaps and Derivatives Association 2015 Resolution Stay Protocol.

The rule would ensure consistency with restrictions on financial contracts under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act that support the orderly resolution of financial firms. Additionally, by requiring GSIBs to clarify in

their QFCs that the US special resolution regimes apply, the proposal would help ensure that all QFC counterparties (both domestic and foreign) would be treated similarly in an orderly resolution. The proposal also requires GSIBs to ensure that their QFCs restrict the ability of counterparties to terminate, liquidate collateral or exercise other default rights based on the resolution of an affiliate of the GSIB. This restriction on default rights means that the affiliates of a GSIB that are able to meet their obligations should not be forced to enter resolution by the failure of another affiliate of the GSIB.

Comments on the proposal are due by August 5, 2016.

The Federal Reserve Board press release is available at: http://www.federalreserve.gov/newsevents/press/bcreg/20160503b.htm and the proposed rule is available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160503b1.pdf.

US Federal Deposit Insurance Corporation Chairman Gruenberg Discusses Resolution of Systemically Important Financial Institutions

On April 21, 2016, FDIC Chairman Martin Gruenberg discussed improvements in cross-border cooperation with respect to the resolution of systemically important financial institutions. He highlighted ongoing conversations among leading financial jurisdictions at an FDIC-hosted high-level meeting of the heads of the finance ministries, central banks and leading financial regulatory bodies in the United States and the UK. Gruenberg also discussed the close working relationship between the FDIC and the EU's Single Resolution Board as well as the regular meetings of the joint working group maintained by the FDIC and EC focused on resolution and deposit insurance issues. In addition to meetings with other regulatory authorities, he cited the importance of the cross-border crisis management groups for each of the global systemically important financial institutions. Significantly, he noted that in his opinion, should a systemically important financial institution in the United States experience severe financial distress today, it would be able to be resolved in an orderly manner under either the Orderly Liquidation Authority under Dodd-Frank Act, or under traditional bankruptcy law. Gruenberg concluded by noting the value of having a single agency, the FDIC, be responsible for both deposit insurance and resolution authority in the United States.

Chairman Gruenberg's speech is available at: https://www.fdic.gov/news/news/speeches/spapr2116.html.

EU Guidelines on Disclosure of Confidential Information under the Bank Recovery & Resolution Directive Finalized

On April 19, 2016, the EBA published a report, including final Guidelines, on how confidential information collected under the EU Bank Recovery and Resolution Directive should be disclosed. The BRRD restricts the disclosure of confidential information by recipients of such information in the course of their professional activities unless certain conditions are met. One of these conditions is that the information is in summary or collective form such that the relevant entity cannot be identified. The EBA's Guidelines stipulate that confidential information should be provided either in a brief statement or on an aggregate basis, in anonymized form, taking into account the number of institutions, specific patterns and the context of the disclosure. Regulators of EU member states have six months from when the translated versions are published by the EBA to implement the Guidelines.

The report and Guidelines are available at: http://www.eba.europa.eu/documents/10180/1441885/EBA-GL-2016-03+%28Final+report+on+GL+on+the+provision+of+information+in+summary+or+collective+form+for+the+purposes+of+Article+84%283%29%20of+BRRD.pdf.

People

Financial Crimes Enforcement Network Director to Step Down

On April 26, 2016, Jennifer Shasky Calvery announced that she will step down as Director of the US Treasury Department's Financial Crimes Enforcement Network at the end of May. She has served as FinCEN Director since September 2012. FinCEN has not announced her successor.

US Federal Reserve Board Names Matthew Eichner Director of Reserve Bank Operations and Payment Systems

On April 21, 2016, the Federal Reserve Board named Matthew J. Eichner as the director of its Division of Reserve Bank Operations and Payment Systems, effective May 1, 2016. Eichner has served as deputy director of the division since January 2015.

Upcoming Events

May 17, 2016: European Commission, public hearing on the EU regulatory framework for financial services, understanding the interactions and cumulative impact of legislation.

Upcoming Consultation Deadlines

May 6, 2016: FCA, Payment Systems Regulator, PRA and Bank of England Consultation on Draft Innovation Plan for Financial Services

May 13, 2016: Federal Reserve Board Notice of Proposed Rulemaking on Risk-Based Capital Guidelines: Implementation of Capital Requirements for Global Systemically Important Bank Holding Companies

May 16, 2016: PRA Consultation on Proposed Amendments to Rules on Contractual Recognition of Bail-in

May 18, 2016: FCA Call for Input on Retained Provisions of the Consumer Credit Act

May 20, 2016: ESMA Consultation on Guidelines for Information on Commodity and Spot Markets under the Market Abuse Regulation

May 26, 2016: FDIC Notice of Proposed Rulemaking on Recordkeeping for Timely Deposit Insurance Determination

June 2, 2016: HM Treasury Consultation on UK Government's proposed secondary annuities market due to be introduced in April 2017

June 3, 2016: Federal Reserve Board Notice of Proposed Rulemaking on Single-Counterparty Credit Limits for Domestic and Foreign Bank Holding Companies

June 3, 2016: Federal Reserve Board Notice for Proposed Agency Information Collection Activities regarding New Data Items for Regulatory Reporting by Foreign Banking Organizations

June 3, 2016: Basel Committee Consultation on Standard Measurement Approach for Operational Risk

June 3, 2016: PRA Consultation on Risk-Based Levies for the Financial Services Compensation Scheme Deposit Class

June 10, 2016: Basel Committee on Banking Supervision Proposal for a Revised Pillar 3 Disclosure Framework

June 14, 2016: European Commission Consultation on Harmonizing EU Insolvency Regimes Under its Capital Markets Union Action Plan

June 21, 2016: FCA Consultation on Proposed Rules and Guidance for the Secondary Annuity Market due to start in April 2017

June 22, 2016: EBA Consultation on Changes to Calculation of Interest Rate Risk on Capital Requirements

June 29, 2016: PRA Consultation on Underwriting Standards for Buy-to-Let Mortgage Contracts

July 13, 2016: FCA Report on Investment and Corporate Banking Strategy

July 14, 2016: FCA and PRA Consultation on Proposed Implementation of the Enforcement Review and the Green Report

July 15, 2016: Basel Committee on Banking Supervision Consultation on Guidelines for Prudential Treatment of Problem Assets

July 22, 2016: US Federal Reserve Board, OCC, FDIC, NCUA, FHFA and SEC Notice of Proposed Rulemaking on Incentive-Based Compensation Restrictions

This newsletter is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. If you wish to receive more information on the topics covered in this publication, you may contact your usual Shearman & Sterling representative or any of the following:

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