SHEARMAN & STERLING LLP

FINANCIAL INSTITUTIONS ADVISORY & FINANCIAL REGULATORY GROUP NEWSLETTER

NOVEMBER 18, 2016
ISSUE 20/2016

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.

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Bank Prudential Regulation & Regulatory Capital

US Office of the Comptroller of the Currency Launches Web System for Banks to File Licensing and Certain Applications and Notices

On November 7, 2016, the US Office of the Comptroller of the Currency announced that it will launch a web-based system for banks to file licensing and public welfare investment applications and notices early next year. The Central Application Tracking System will allow OCC-supervised institutions to draft, submit and track applications and notices online. The system also will allow OCC staff to receive, process and manage those submissions online. The first phase of the system's rollout will start on January 17, 2017, with the second and third phases set to begin that spring. The new system will replace the current OCC systems, e-Corp and CD-1 Invest. Before the phase 1 rollout, the OCC will provide webinars and resources to explain registration and use of the new system.

The OCC press release is available at: https://occ.gov/news-issuances/news-releases/2016/nr-occ-2016-143.html.

US Board of Governors of the Federal Reserve System Announces Annual Indexing of 2017 Reserve Requirement Exemption Amount and of Low Reserve Tranche

On October 27, 2016, the US Board of Governors of the Federal Reserve System announced the annual indexing of the reserve requirement exemption amount and the low reserve tranche, two amounts used in determining reserve requirements of depository institutions under Regulation D.

All depository institutions must hold a percentage of certain types of deposits as reserves in the form of vault cash, as a deposit in a Federal Reserve Bank or as a deposit in a pass-through account at a correspondent institution. Reserve requirements currently are assessed on the depository institution's net transaction accounts (mostly checking accounts). Depository institutions must also regularly submit reports of their deposits and other reservable liabilities.

For net transaction accounts in 2017, the first $15.5 million, up from $15.2 million in 2016, will be exempt from reserve requirements. A three percent reserve ratio will be assessed on net transaction accounts over $15.5 million up to and including $115.1 million, up from $110.2 million in 2016. A ten percent reserve ratio will be assessed on net transaction accounts in excess of $115.1 million.

The new low reserve tranche and reserve requirement exemption amount will apply to the 14-day reserve maintenance period that begins January 19, 2017. The Federal Reserve Board also announced changes in two other amounts, the nonexempt deposit cutoff level and the reduced reporting limit, that are used to determine the frequency with which depository institutions must submit deposit reports.

The Federal Reserve Board final rule is available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20161027a1.pdf.

US Federal Reserve Board Votes to Affirm the Countercyclical Capital Buffer at Current Zero Percent Level

On October 24, 2016, the US Federal Reserve Board announced that it had voted to affirm the countercyclical capital buffer at the current level of zero percent. The release notes that the CCyB is a macroprudential tool that can be used to raise capital requirements on internationally active banking organizations when such organizations are exposed to an elevated risk of above-normal future losses. In such circumstances, the CCyB would be available to help banking organizations absorb higher losses and to moderate credit supply fluctuations.

The Federal Reserve Board's release noted that the Federal Deposit Insurance Corporation and the OCC were consulted before the Federal Reserve Board voted on this decision. Should the Federal Reserve Board in the future modify the CCyB amount, banking organizations would have twelve months before an increase becomes effective unless the Federal Reserve Board decides on an earlier effective date.

The Federal Reserve Board press release is available at: https://www.federalreserve.gov/newsevents/press/bcreg/20161024a.htm.

US Federal Reserve Board Grants Relief from Certain US Risk Committee Requirements Applicable to Foreign Banking Organizations under Regulation YY

On October 19, 2016, the US Federal Reserve Board issued letters to two banks, granting relief from certain US risk committee requirements under Regulation YY in light of certain home country corporate governance requirements and practices of the banks involved. Regulation YY requires foreign banking organizations with combined US assets of more than $50 billion but US non-branch assets of less than $50 billion to establish a US risk committee as a committee of the global board of directors, on a standalone basis, or as a joint committee with its enterprise-wide risk committee. One member of the committee must not be an officer or employee of the company or its affiliates (or an immediate family member of a person who is an executive officer of the company or its affiliates).

The Federal Reserve Board authorized Sumitomo Mitsui Financial Group, Inc. to establish a US risk committee consisting of management officials from its home office and US operations as well as two independent members who are not currently affiliated with any Sumitomo entity. Among other conditions, the minutes of each US risk committee meeting and the materials used for such meetings will be reported to each member of the Sumitomo board of directors, and any member of the US risk committee may escalate any matter within the responsibilities of the US risk committee to the attention of the Sumitomo board of directors by notifying any member or members of such board.

The Federal Reserve Board authorized Rabobank to meet the US risk committee requirement by establishing a virtual North American board of directors. Rabobank, which has an executive board and a supervisory board, demonstrated to the Federal Reserve Board that it would not be able to maintain a risk committee at the board of directors level because these members would be prohibited under Dutch law from fulfilling their responsibilities as required by Regulation YY. In addition, Rabobank noted that none of executive board members would be considered independent for purposes of Regultion YY, meaning that its existing enterprise-wide risk committee of its executive board would not meet the requirements of Regulation YY. The virtual North American board of directors includes a US risk committee that includes two members of the executive board and one independent member who is not a member of the executive board or supervisory board. The US risk committee charter includes clear, direct reporting lines from the US risk committee to the risk management committee group of the executive board. Based on these and other considerations, the Federal Reserve Board found that this approach was consistent with the US risk committee requirements of Regulation YY.

The Federal Reserve Board's letters are available at: https://www.federalreserve.gov/bankinforeg/regulation-yy-foreign-banking-organization-requests.htm.

Proposed Revisions to EU Supervisory Reporting Requirements for Sovereign Exposures and Operational Risk

On November 14, 2016, the European Banking Authority published a consultation paper proposing revisions to the Implementing Technical Standards on supervisory reporting. The ITS on supervisory reporting collate the prudential reporting requirements of banks under the Capital Requirements Regulation, related technical standards and other financial information required by national regulators. The ITS on supervisory reporting are updated when prudential or supervisory requirements change. The EBA is proposing to revise the ITS in relation to supervisory reporting in order to address weaknesses in the existing supervisory reporting requirements concerning sovereign exposures. The EBA has identified areas where additional information or gaps should be filled. In addition, the EBA is proposing to amend the ITS on supervisory reporting in relation to operational risk so that national regulators can more closely monitor losses due to operational risk events and analyze the drivers behind those events that lead to material losses, in particular for larger banks.

The EBA intends to submit the final draft revised ITS to the European Commission in March or April 2017. The revised reporting requirements are expected to apply from March 1, 2018. Responses to the consultation are requested by January 7, 2017.

The consultation paper is available at: http://www.eba.europa.eu/documents/10180/1658500/EBA-CP-2016-20+%28CP+on+amending+ITS+on+Reporting%29.pdf.

European Banking Authority Consults on Bank Authorization Application Information Requirements

On November 8, 2016, the EBA published a consultation paper on proposed technical standards on the information to be provided by applicant banks to national regulators in support of their applications for authorization. The Capital Requirements Directive requires a bank to obtain authorization before it begins its operations. Member states set out the requirements for the authorization in their country which means that different standards apply across the EU. At the moment, national regulators stipulate the information required to be submitted in support of a bank's application for authorization and the requirements around the application process. CRD IV requires the EBA to prepare Regulatory Technical Standards setting out the information to be provided in support of an application for bank authorization, requirements applicable to shareholders and qualifying holdings and obstacles which may prevent the effective exercise of supervisory powers by a national regulator. The EBA is also required to prepare ITS setting out the forms, templates and procedures relating to an authorization application. Once the RTS and ITS enter into force, the requirements will be directly applicable across the EU, largely replacing the existing national regimes on information requirements for authorization applications. However, the proposed RTS do allow some flexibility for national regulators to require additional information from an applicant and provide that information is not required where a national regulator has waived a certain authorization requirement for a particular applicant bank. The EBA is proposing that an application for authorization includes, amongst other things, information on a bank's identification and history, own funds, the proposed activities the bank intends to carry out, shareholders and close links, organizational structure and internal audit policies and infrastructure.

The EBA is also seeking views on whether the RTS should provide for information to be submitted in a sequenced manner to allow for a limited authorization regime for start-ups during an interim period. The EBA has not included provisions on this in the proposed draft RTS because CRD does not provide for such an application process and restricted interim authorizations might cause confusion and raise concerns about the credibility of banks. An example proposed by the EBA would allow a new bank to obtain restricted authorization (such as a cap on the amount of deposits it could accept) for a limited period by initially fulfilling fewer requirements and subsequently satisfying the remaining requirements over a set period of time. Once a bank had then met all of the requirements, the restrictions would be lifted.

The proposed draft ITS set out the form that applicant banks would use to obtain authorization, the procedures and requirements for submission of the application and the approach that a national regulator should take for incomplete applications. There are no provisions on how long a national regulator would have to assess a complete application and it is expected that national regulators or members states will continue to set this timeframe.

The EBA is proposing that the technical standards would only apply six months after they enter into force and only to applications submitted after that date. The consultation closes on February 8, 2017.

The consultation paper is available at: http://www.eba.europa.eu/documents/10180/1652933/Consultation+Paper+on+RTS+and+ITS+on+the+authorisation+of+credit+institutions+%28EBA-CP-2016-19%29.pdf.

EU Report on the Implications of Implementing Basel Frameworks for Counterparty Credit Risk and Market Risk Published

On November 4, 2016, the EBA published a Report on the impact of the adoption into EU legislation of the new international frameworks for counterparty credit risk and market risk. The EBA Report responds to Calls for Advice from the European Commission received in April 2016, as part of the Commission's review of the CRR.

As part of its review, the Commission is considering the impact of implementing the Basel Committee on Banking Supervision's framework for market risk, known as the fundamental review of the trading book (FRTB), published in January 2016 and the new standardized approach for the calculation of the exposure value of derivatives, known as SA-CCR, published in March 2014. The Commission asked the EBA to provide technical advice assessing the impact for EU banks resulting from the adoption of the Basel Committee's framework on market risk and whether any adjustments to that framework would be appropriate. The EBA

was also asked for advice on the impact of implementing the SA-CCR, including the proportionate application of SA-CCR to smaller firms.

The EBA's Report assesses the implications of implementing both of the FRTB and SA-CCR frameworks in the EU for both large and small banks, highlights interpretative and operational issues that might need to be addressed before the rules are fully implemented, considers how greater proportionality can be introduced within the frameworks and makes several recommendations. In particular, the EBA is recommending: (i) increasing the threshold value for small trading book business below which firms would be able to use the non-trading book approach to calculate capital requirements (proposed as EUR50 million); (ii) introducing a proposed EUR20 million threshold for small derivative businesses below which firms would be allowed to use simple approaches currently used to calculate CCR capital requirements, subject to recalibration; (iii) proportionality approaches for smaller banks; (iv) implementing technical requirements through delegated acts or Technical Standards so that the EBA can assess key changes in the regulation timeously; and (v) requiring more granular reporting so that regulators can obtain a better overview of firms' CCR exposures and monitor the appropriateness of the different proportionality thresholds.

The Report is available at: http://www.eba.europa.eu/documents/10180/1648752/Report+on+SA+CCR+and+FRTB+implementation+%28EBA-Op-2016-19%29.pdf, the CfA on FRTB is available at: http://www.eba.europa.eu/documents/10180/1466081/%28EBA-2016-E-662%29%20Ares%282016%291819771+-+CfA+CRR+Own+Fund+Requirement.pdf/053ffda4-a295-4fb0-ad76-a05264ef4fe1, and the CfA on SA-CCR is available at: http://www.eba.europa.eu/documents/10180/1466081/%28EBA-2016-E-668%29%20CfA+Com+implementation+counterparty+credit+risk%2C%20Ares%282016%291900009.pdf/2c59c7ee-06bc-41fe-ad02-4dccca04cfef.

European Central Bank Aims to Harmonize Approach to Options and Discretions for All Banks Within the Single Supervisory Mechanism

On November 3, 2016, the European Central Bank launched a consultation on proposals to harmonize how Euro member state national regulators of less significant banks exercise the options and discretions available to them under the CRR and CRD. The ECB has already harmonized the application of options and discretions for the banks that it directly prudentially supervises under the Single Supervisory Mechanism. The ECB considers that it is appropriate to develop a harmonized approach of supervision for all banks within the SSM, to ensure the smooth functioning of the whole euro area banking system. To do so, the ECB is intending to adopt a Guideline, which would be legally binding, and a Recommendation, which would not be legally binding. The options and discretions relate to own funds requirements, capital requirements, large exposures, liquidity and transitional provisions. The consultation closes on January 5, 2017.

The proposed Guideline is available at: https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/ond_lsi/ond_lsi_guide.en.pdf?8bcc44a850bbdfb61b233d1e5b33227c, the proposed Recommendation is available at: https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/ond_lsi/ond_lsi_recommendation.en.pdf?bd87b1e27c2dd4e15fe1924878cee872, and further information about the ECB's proposals is available at: https://www.bankingsupervision.europa.eu/legalframework/publiccons/html/ond_lsi.en.html.

European Banking Authority Presents Proposed Design of a New Prudential Regime for Investment Firms

On November 3, 2016, the EBA published a discussion paper on the design for a new framework for applying prudential standards to non-bank investment firms that are not deemed to be systemically important. The EBA published a report in December 2015 in response to a Call for Advice from the European Commission on the suitability of certain aspects of the EU prudential regime for investment firms. In that report, the EBA recommended that it was necessary to distinguish between investment firms for which the requirements in the CRD and CRR are appropriate and investment firms for which those requirements are inappropriate. It recommended that a separate prudential regime should be established for these investment

firms. The Commission issued a second CfA in June 2016, asking for advice on the criteria to identify the investment firms for which the CRD IV requirements are appropriate and which rules should apply to them. The EBA published an Opinion on the criteria aspect of the CfA on October 20, 2016.

The proposals in the discussion paper focus on investment firms that are subject to the current Markets in Financial Instruments Directive but are also relevant for UCITS management companies and alternative investment fund managers that are authorized to conduct certain MiFID investment services or activities. The EBA's view is that a harmonized set of requirements that are relevant to the nature of investment business and which covers the broad range of all types of investment firms is needed. The EBA is proposing a framework where the ongoing capital requirements are calculated based on capital factors attributable to the risks that investment firms pose to customers, market integrity and liquidity as well as the risks to which investment firms are exposed to.

The EBA is seeking views on the proposed framework, which is its preferred option, as well as on the possibility of applying CRD and CRR requirements to certain investment firms in a proportionate and targeted manner. Responses to the consultation are due by February 2, 2017. The EBA will publish its final report and Opinion in response to the Commission's CfA by June 30, 2017.

The Discussion Paper is available at:
http://www.eba.europa.eu/documents/10180/1647446/Discussion+Paper+on+a+new+prudential+regime+for+Investment+Firms+%28EBA-DP-2016-02%29.pdf and the EBA's Opinion on the criteria for identifying investment firms at:
http://finreg.shearman.com/eu-recommendations-on-the-appropriateness-of-the-.

European Banking Authority Proposes Guidelines on Internal Governance

On October 28, 2016, the EBA launched a consultation on draft revised Guidelines on internal governance for credit institutions and investment firms. The CRD imposes governance requirements on banks and investment firms which include, amongst other things, requirements to have robust governance arrangements, to establish a risk committee and nomination committee and to have adequate risk management processes and internal controls. CRD requires the EBA to develop Guidelines on internal governance. The proposed new Guidelines set out the internal governance arrangements, processes and mechanisms that firms must implement to ensure effective management of the firm. The Guidelines will apply to a firm's governance arrangements, including their organizational structure and processes to identify, manage, monitor and report risks that they may be exposed to, taking into account the three lines of defense model. The EBA's current Guidelines on internal governance, published on September 27, 2011, will be repealed when the new Guidelines enter into force. Responses to the consultation are due by January 28, 2017.

The consultation paper and proposed revised Guidelines are available at:
http://www.eba.europa.eu/documents/10180/1639914/Consultation+Paper+on+Guidelines+on+internal+governance+%28EBA-CP-2016-16%29.pdf and the current Guidelines are available at: https://www.eba.europa.eu/documents/10180/103861/EBA-BS-2011-116-final-EBA-Guidelines-on-Internal-Governance-(2)_1.pdf.

European Banking Authority Responds to Commission Call for Advice on Large Exposure Framework

On October 24, 2016, the EBA published a report outlining its response to the Commission's call for advice, published on April 26, 2016, on the review of the large exposures framework laid down in the CRR. The Commission is considering whether to implement the agreed Basel Committee's framework for measuring and controlling large exposures by modifying the CRR through a legislative proposal before the end of 2016. The EBA's Report analyzes the impact of aligning certain aspects of the large exposures framework pursuant to the CRR. The EBA states that it would be appropriate to strengthen the large exposures capital base by including only Tier 1 capital instead of also including a proportion of Tier 2 capital and to reduce the large exposures limit for exposures from Global Systemically Important Institutions to other G-SIIs to 15% of Tier 1 capital. The EBA considers that the existing EU rules on exposures to funds and securitizations is adequate and consistent with the Basel

framework. For exposures to shadow banking entities, the EBA is proposing, once it has analyzed the position, to submit a report to the Commission on whether the existing guidelines are effective and whether any aspects of those guidelines should be changed into legislative requirements. The EBA recommends delaying extending the new standardized approach for measuring counterparty credit risk to the large exposures framework until after the SA-CCR has been fully implemented and its impact assessed.

The Report also assesses the use and potential impact of removing the following discretionary exemptions from the large exposures regime: (i) intra-group exposures within cooperative networks; (ii) inter-bank exposures in specific sectors; (iii) overnight interbank exposures in minor trading currencies; (iv) guarantees on mortgage loans financed by issuing mortgage bonds; and (v) exposures to recognized exchanges. The EBA recommends keeping exemptions (i) and (ii) and deleting (iii) to (v). The exemption for exposures to recognized exchanges was recently introduced and it was intended that the same treatment might be applied to clearing houses and clearing mechanisms in the future, however, the EBA does not comment on the impact of removing the last exemption on the potential extension. The EBA highlights the importance of reducing exemptions from the large exposures regime where appropriate to simplify the regime and further align it to the Basel Committee standards and for this purpose, the EBA recommends that a mandate for a report to assess all remaining exemptions to large exposures be added to the CRR.

The Report also outlines the EBA's views on aspects of the large exposures framework that could be aligned with the Basel Committee standards and has quantified their impact where possible. The Report analyzes the impact of removing the ability of institutions to reduce exposures by the value of immovable property used as collateral. The EBA also identifies other areas of the CRR that require clarification or where a mandate should be given to the EBA to conduct further analysis, with the aim of enhancing clarity and harmonization across jurisdictions, such as the treatment of breaches to large exposures limits.

The EBA's Report is available at:
http://www.eba.europa.eu/documents/10180/1632518/EBA+report+on+the+review+of+the+large+exposures+regime+%28EBA-Op-2016-17%29.pdf?_sm_au_=iVVHVWj7jP3TtnsN, the Call for Advice is available at:
http://www.eba.europa.eu/documents/10180/1632529/Call+for+Advice+on+Large+exposures+%28EBA-2016-E-675%29.pdf?_sm_au_=iVVHVWj7jP3TtnsN and the Basel Committee framework is available at:
http://www.bis.org/publ/bcbs283.pdf?_sm_au_=iVVHVWj7jP3TtnsN.

EU Recommendations on the Appropriateness of the Prudential Regime for Investment Firms

On October 20, 2016, the EBA published an Opinion on the criteria for identifying investment firms to which the EU regulatory capital requirements legislation should apply. The EBA published a report in December 2015 in response to a Call for Advice from the European Commission on the suitability of certain aspects of the EU prudential regime for investment firms. In that report, the EBA recommended that it was necessary to distinguish between investment firms for which the requirements in the CRD and CRR are appropriate and investment firms for which those requirements are inappropriate. It recommended that a separate prudential regime should be established for these investment firms. The Commission issued a second Call for Advice in June 2016, asking for advice on the criteria to identify the investment firms for which the CRD IV requirements are appropriate and which rules should apply to them.

The EBA's Opinion states that the following criteria should be used to identify investment firms that should be subject to CRD IV: systemic importance, interconnectedness with the financial system, complexity and bank-like activities. The EBA recommends that investment firms that have been identified, according to the current EU regulatory framework contained in the relevant technical standards and EBA Guidelines, as G-SIIs or other systemically important institutions (O-SIIs) should be subject to the full requirements of CRD IV. Nine investment firms in the EU are currently classed as being O-SIIs. None has been assessed as being a G-SII. The EBA also recommends in its Opinion that any regulatory change for investment firms should be delayed until the review of the CRR is at a more advanced stage. The EBA's response on the rules that should apply to the O-SII investment firms is scheduled to be provided by June 30, 2017.

The EBA's Opinion is available at: http://www.eba.europa.eu/documents/10180/1639033/Opinion+of+the+European+Banking+Authority+on+the+First+Part+of+the+Call+for+Advice+on+Investment+Firms+%28EBA-Op-2016-16%29.pdf, the Commission's Call for Advice is available at: https://www.eba.europa.eu/documents/10180/1321242/CfA+Investment+firms.pdf/9d8f89ab-720a-4ebf-8db7-6e5ebcddbd07; and the EBA's 2015 Report is available at: http://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-20+Report+on+investment+firms.pdf.

European Banking Authority Publishes Final Guidelines on Corrections to Duration for Debt Instruments

On October 14, 2016, the EBA published final Guidelines on the correction required for the calculation of Modified Duration for debt instruments subject to prepayment risk under the CRR. The CRR establishes two methods to calculate capital requirements for general interest rate risk. The relevant methods are the Maturity-Based calculation and the Duration-Based calculation of general risk. The final Guidelines apply to the Duration-Based calculation. The Duration-Based calculation uses the concept of Modified Duration pursuant to the formulae outlined in the CRR. This method is only valid for instruments that are not subject to repayment risk. The EBA is mandated to issue guidelines establishing how to correct the Modified Duration calculation to reflect prepayment risk. The EBA has proposed two approaches to correct the calculation. One option is to treat the debt instrument with prepayment risk as if it is a combination of a plain vanilla bond and an embedded option. The Modified Duration of the plain vanilla bond is therefore corrected with the change in value of the embedded option; which is estimated according to its theoretical delta, resulting from a 100 basis point movement in interest rates. The other option is directly to calculate the change in value of the whole instrument subject to a repayment risk resulting from a 100 basis point movement in interest rates. The Guidelines will apply from March 1, 2017.

The final Guidelines are available at: http://www.eba.europa.eu/documents/10180/1614350/Final+report+on+Guidelines+on+corrections+to+modified+duration+for+debt+instruments+%28EBA-GL-2016-09%29.pdf.

EU Technical Standards on Mapping Credit Assessments by Credit Rating Agencies Published

On October 12, 2016, a Commission Implementing Regulation containing ITS on the mapping of credit assessments to risk weights of External Credit Assessment Institutions under CRR was published in the Official Journal of the European Union. The CRR requires the credit ratings scales used by ECAIs (i.e., credit rating agencies that are registered or certified under the EU Credit Rating Agency Regulation) to be mapped to the risk weights categories in the CRR.

The European Commission has adopted ITS that amended the final draft ITS submitted by the European Supervisory Authorities (the EBA, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority). This is despite the ESAs rejecting the Commission's proposed amendments in an Opinion published in May 2016.

The ITS aim to ensure sound credit assessments to encourage financial stability in the EU and determine an objective approach for attributing risk weights to assessments carried out by ECAIs.

The ITS on mapping of credit assessments for credit risk is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1799&from=EN.

EU Technical Standards on Mapping Credit Assessments by Credit Rating Agencies for Securitization Positions

On October 12, 2016, a Commission Implementing Regulation containing ITS on the mapping of assessments by CRAs for securitization positions under the CRR was published in the Official Journal of the European Union. The CRR permits the risk weights under the standardized and internal ratings based approaches for securitization positions to be determined, if applicable, based on the credit quality of the positions. This credit quality is determined by reference to credit ratings issued or endorsed by ECAIs (i.e., CRAs that are registered or certified under the EU Credit Rating Agency Regulation). The ITS determine the mapping between credit ratings and the credit quality steps for the allocation of risk weights set out in the CRR for securitization positions. The ITS enter into force from November 1, 2016.

The ITS on mapping of credit assessments for securitizations is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1801&from=EN.

EU Report and Standardized Templates for Additional Tier 1 Instruments

On October 10, 2016, the EBA published an updated Report on the monitoring of Additional Tier 1 instruments and standardized templates for AT1 instruments. This follows a consultation in July 2016. The CRR sets out the eligibility criteria for AT1 instruments, which are further detailed in RTS. The CRR requires the EBA to review the quality of own funds instruments issued by banks across the EU. The Report sets out the results of its monitoring the issuances of AT1 capital instruments, assessing the terms and conditions of selected issuances against the criteria provided for in CRR and the related RTS. The Report is based on the review of 33 AT1 issuances from EU banks, which took place between August 2013 and December 2015, for a total amount of EUR 35.5 billion. The Report sets out detailed analysis of some of the clauses reviewed, including the EBA's views on those clauses, and interpretation of some of the CRR provisions, in particular the provisions relating to triggers.

The standardized template for AT1 instruments sets out the EBA's proposed terms and conditions for inclusion in AT1 issuances and includes both essential terms, as well as optional terms, relating to flexibility of payments, permanence and loss absorbency. The EBA confirms that use of the template terms and conditions is not legally binding and an issuance would not be considered non-compliant because they were not used. The EBA intends to update the template over time to reflect regulatory developments and market practice.

The updated report is available at: http://www.eba.europa.eu/documents/10180/1360107/AT1+Report+October+2016.pdf and the AT1 standard template is available at:
http://www.eba.europa.eu/documents/10180/1360107/Final+AT1+standard+templates+.pdf.

International Standard for TLAC Holdings Published

On October 12, 2016, the Basel Committee published the final Standard for Total Loss Absorbing Capacity holdings. The Financial Stability Board published the TLAC requirements for global systemically important banks in November 2015, which set a minimum requirement for TLAC for G-SIBs, including a Term Sheet implementing the requirements. The Term Sheet states that G-SIBs must deduct, from their own TLAC or regulatory capital, exposures to TLAC instruments and liabilities issued by other G-SIBs and calls on the Basel Committee to further specify these requirements. The Basel Committee consulted in November 2015 on the proposed treatment of TLAC holdings in G-SIBs.

The TLAC holdings standard will require banks to deduct holdings of TLAC instruments that are not already included in regulatory capital from their own Tier 2 capital, subject to the thresholds that apply to existing holdings of regulatory capital and an additional 5 per cent threshold for non-regulatory-capital TLAC holdings only. In addition, instruments that are ranked at the same level as subordinated forms of TLAC must also be deducted.

The TLAC holdings standard will apply to G-SIBs and non-G-SIBs from January 1, 2019 for investments in most G-SIBs which is the same time that the TLAC requirements apply. The TLAC holdings standard will apply later for G-SIBs headquartered in emerging market economies.

The final Standard is available at: http://www.bis.org/bcbs/publ/d387.pdf.

Basel Committee on Banking Supervision Consults on Regulatory Treatment of Accounting Provisions

On October 11, 2016, the Basel Committee published a consultation paper and discussion paper on the regulatory treatment of accounting provisions under the Basel III capital framework and related policy considerations. The International Accounting Standards Board and the US Financial Accounting Standards Board have adopted new provisioning standards that require the use of expected credit loss models rather than incurred loss models — the International Financial Reporting Standard (IFRS) 9 and the Current Expected Credit Losses (CECL), respectively. These standards modify provisioning standards to incorporate forward-looking assessments in the estimation of credit loss. The new IASB Standards will apply from January 1, 2018, although earlier

application is permitted. The new FASB Standards will apply from January 1, 2020 for certain banks that are public companies and from 2020 for all other banks, although early application by all banks is permitted from 2019. The Basel Committee is considering the implications of new ECL models for regulatory capital because the new models will result in fundamental changes to the provisioning practices of banks. The consultation paper sets out the current regulatory treatment of provisions as well as the Basel Committee's proposal to retain, for an interim period, the current regulatory treatment of provisions under the standardized and the internal ratings-based approaches. In particular, the Committee is proposing that, in the interim period, jurisdictions would extend their existing approaches to categorizing provisions as general provisions (GP) and specific provisions (SP) to provisions measured under the applicable ECL accounting model.

The Basel Committee is also seeking feedback on whether any transitional arrangements are required to assist banks in adjusting to the new expected credit loss provisions. The consultation paper sets out three possible models and feedback is requested on the design of a transitional arrangement, including on what the appropriate reference metric should be (the consultation paper suggests CET1 capital expressed as a "money amount") and the appropriate length of a transitional period (the consultation paper suggests three to five years). The discussion paper outlines policy options for the long-term regulatory treatment of such provisions. The options under consideration are: (i) retaining the current regulatory treatment of provisions, including the distinction between GP and SP; (ii) retaining the distinction between GP and SP for regulatory purposes based on definitions that would produce universally aligned categorizations of ECL provisions as GP or SP across jurisdictions; (iii) introducing a standardized regulatory EL component to the standardized approach for credit risk; and (iv) other alternatives proposed in response to the consultation. Responses to both papers are due by January 13, 2017.

The consultation paper is available at: http://www.bis.org/bcbs/publ/d386.pdf and the discussion paper is available at: http://www.bis.org/bcbs/publ/d385.pdf.

Bank Structural Reform

UK Makes Technical Amendments to Its Ring-Fencing Legislation

On October 28, 2016, the Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2016 was published. The Amendment Order amends the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 and the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014. The Amendment Order, amongst other things, changes the definition of a UK deposit-taker so that it does not capture UK branches of foreign banks, and amends the duty of a ring-fenced bank to provide specified information so that it only applies where individuals are located in a European Economic Area state and in relation to deposit accounts. The amendments come into force on December 1, 2016.

The Amendment Order is available at: http://www.legislation.gov.uk/uksi/2016/1032/pdfs/uksi_20161032_en.pdf.

Conduct & Culture

Federal Reserve Bank of New York President Delivers Opening Remarks at Conference on Culture within the Financial Services Industry

On October 20, 2016, William Dudley, President of the Federal Reserve Bank of New York, delivered opening remarks at the New York Fed's third conference on culture in the financial industry. Dudley opened by citing "pervasive" evidence that the financial services industry faces deep-seated cultural and ethical problems and an erosion of trustworthiness that impedes the ability of the industry to do its job. Dudley argued that a trustworthy financial industry would also be a more productive industry, avoiding spending time on reputational or legal problems and better attracting top talent.

Dudley also argued that incentive structures and accountability will do more to improve the culture of the industry than "statements of virtues," citing the need for real consequences rather than aspirational ideals. He argued that firms need to assess

their incentive regimes to be consistent with good conduct, and supervisors should monitor compensation to see if incentive structures must be changed. Dudley also noted the role of the public sector and new rules in overcoming collective action and first-mover problems. Dudley concluded by arguing that an effort to air previously silent issues and discuss what had not been discussed before could be an effective tool in reforming the culture of the financial industry.

President Dudley's remarks are available at: https://www.newyorkfed.org/newsevents/speeches/2016/dud161020.

Compensation

European Securities and Markets Authority Publishes Final Guidelines on Remuneration Practices

On October 14, 2016, ESMA published two sets of final Guidelines on Sound Remuneration Policies under the Undertakings for Collective Investments in Transferable Securities Directive and the Alternative Investment Funds Management Directive. The Guidelines follow ESMA's final report that was published in March of this year.

The UCITS Sound Remuneration Guidelines will apply to management companies, including those that are subsidiaries of credit institutions subject to sector-specific remuneration principles, and investment companies that have not designated a management company authorized under the UCITS Directive. The Guidelines set out the obligations of the management company to manage its financial situation and the governance of remuneration (which includes issues such as the design, approval and oversight of the remuneration policy) and outline the requirements for establishing and applying remuneration policies and practices for management companies and their identified staff, specifying the categories of identified staff.

The AIFMD Remuneration Guidelines have been amended to expand the scope of the current AIFMD Guidelines to make provision for the application of the remuneration rules to AIFMs that are part of a group, in particular, where the group may be subject to the remuneration requirements under the CRD. The UCITS Sound Remuneration Guidelines will apply from January 1, 2017 and will apply to the calculation of payments relating to new awards of variable remuneration to identified staff for the first full performance period after January 1, 2017. The amended AIFMD Guidelines will apply from January 1, 2017.

The Guidelines on Sound Remuneration under UCITS are available at: https://www.esma.europa.eu/document/guidelines-sound-remuneration-policies-under-ucits-directive, the amending Guidelines on Sound Remuneration under the AIFMD are available at: https://www.esma.europa.eu/document/guidelines-sound-remuneration-policies-under-aifmd-2 and the final report is available at: https://www.esma.europa.eu/sites/default/files/library/2016-411_final_report_on_guidelines_on_sound_remuneration_policies_under_the_ucits_directive_and_aifmd.pdf.

Competition

Steps Taken to Implement the Remedies Emerging From the UK's Retail Banking Market Investigation

On October 14, 2016, the UK's Competition & Markets Authority published proposals for the implementation of certain remedies to counter the adverse effects on competition which were identified in the CMA's final report on the retail banking market investigation. The CMA published its final report into the supply of retail banking services to personal current account customers and small-and medium-sized enterprises (SMEs) in the UK in August 2016. In that report, the CMA made several recommendations, including the introduction of Open Banking, a single digital application that allows customers to manage their accounts with multiple providers. In response to that recommendation, the nine providers identified in the CMA's report have made proposals for the structure, membership, governance and funding arrangements of the Implementation Entity. It is proposed, amongst other things, that the Implementation Entity's Steering Group would comprise the nine providers as well as representatives of FinTechs, smaller "challenger" banks and payment service providers. Andrew Pinder has already been appointed as Implementation Trustee and will oversee the work of the Implementation Entity. Comments on the Implementation Entity proposals were due by October 21, 2016.

The final report also stipulated a service quality remedy which will require banks to collect and publish service quality information to enable customers to compare providers more easily. The CMA committed to conducting research to inform the requirements that will be imposed on banks for the presentation of service quality information. The CMA has published for consultation, proposed visual representations of service quality indicators. The CMA has also published the report undertaken by Research Works. The CMA is requesting comments on the representations and the Research Works report by October 31, 2016.

The CMA also published the British Bankers' Association proposals, developed with and on behalf of the banks, to implement standardized business current account opening procedures. The CMA will require banks with at least 20,000 active business current accounts to agree and adopt standardized core information and evidence requirements for SMEs seeking to open a business current account. The proposal covers, amongst other things, core standard information and evidence requirements to open an account, the categories of relevant SMEs, and an implementation timetable which sets a final implementation time of Q1 2018.

The statutory deadline for implementation of the CMA's remedies is February 8, 2017. The CMA will be consulting later this year on its draft Retail Banking Order and Undertakings.

The Implementation Entity proposals are available at: https://assets.publishing.service.gov.uk/media/5800ddf3e5274a67eb000000/Implementation_entity_plans_and_proposals.pdf, the proposed presentations of service quality indicators is available at: https://assets.publishing.service.gov.uk/media/58078d4fed915d4b72000018/potential-standard-presentation-note.pdf, the research report is available at: https://assets.publishing.service.gov.uk/media/5800de6ced915d4b75000000/research-works-presentation-of-qualitative-research-findings.pdf, the BBA's proposals on BACs is available at: https://assets.publishing.service.gov.uk/media/58078d6aed915d4b75000012/proposal-from-BBA-to-standardise-BCA-opening_procedures.pdf and further information on the investigation is available at: https://www.gov.uk/cma-cases/review-of-banking-for-small-and-medium-sized-businesses-smes-in-the-uk#remedies-implementation.

Consumer Protection

US Federal Regulatory Agencies Request Comment on Proposed Private Flood Insurance Rule

On October 31, 2016, the US Federal Reserve Board, the Farm Credit Administration, the FDIC, the National Credit Union Administration and the OCC issued a joint notice of proposed rulemaking to implement provisions of the Biggert-Waters Flood Insurance Reform Act.

Federal flood insurance statutes generally require regulated lending institutions to impose a mandatory purchase requirement for flood insurance in connection with loans secured by improved real property located in areas having special flood hazards. Under the Biggert-Waters Act, regulated lenders must accept, in satisfaction of this requirement, policies issued by private insurers that satisfy the criteria specified in the Biggert-Waters Act, in addition to policies made available by the Federal Emergency Management Agency.

The proposed rule includes provisions to help lenders identify private flood insurance policies they would be required to accept and provides that lenders retain their discretion to accept private flood insurance policies that do not meet the criteria for mandatory acceptance, provided certain conditions are met. Furthermore, the proposed rule would establish criteria to apply in determining that coverage offered by a mutual aid society provides the type of policy or coverage that qualifies as "flood insurance" for purposes of the federal flood insurance laws.

The agencies previously issued a proposal addressing private flood insurance and have decided to issue this second proposal for additional public comment based on comments received in response to the first proposal. Comments are due on or before January 6, 2017.

The proposed rule is available at: https:/www.gpo.gov/fdsys/pkg/FR-2016-11-07/pdf/2016-26411.pdf.

Corporate Governance

US Securities and Exchange Commission Proposes Amendments to Require Use of Universal Proxy Cards

On October 26, 2016, the US Securities and Exchange Commission voted to propose amendments to the proxy rules to require parties in a contested election to use universal proxy cards that would include the names of all board of director nominees. The proposal gives shareholders the ability to vote by proxy for their preferred combination of board candidates, similar to voting in person.

The proposed rules would require proxy contestants to provide shareholders with a proxy card that includes the names of both management and dissident director nominees. The rules would apply to all non-exempt solicitations for contested elections other than those involving registered investment companies and business development companies. In addition, the proposed rules would require management and dissidents to provide each other with notice of the names of their nominees, establish a filing deadline and a minimum solicitation requirement for dissidents, and prescribe presentation and formatting requirements for universal proxy cards.

To further facilitate shareholder voting in director elections, the SEC also voted to propose amendments to the proxy rules to ensure that proxy cards specify the applicable shareholder voting options in all director elections and require that proxy statements disclose the effect of a shareholder's election to withhold its vote.

Comments should be received on or before January 9, 2017.

The proposed rule is available at: https://www.gpo.gov/fdsys/pkg/FR-2016-11-10/pdf/2016-26349.pdf.

Credit Ratings

European Commission Reports on Reporting Obligations Under the Credit Rating Agencies Regulation

On October 19, 2016, the European Commission published a report on reporting obligations under the Credit Rating Agencies Regulation. The Report reviewed references to external credit ratings in EU legislation and in private contracts among financial markets counterparties and outlines potential alternatives to credit ratings produced by CRAs that are currently used by market participants across the EU. The alternatives examined include the use of market-based credit risk assessments, internal credit risk assessment tools and third-party credit risk assessments. The Commission concluded that there are currently no feasible alternatives to replace external credit ratings entirely. The Report reviews the credit ratings market and provides an assessment of provisions in the CRA Regulation aimed at increasing competition in the credit rating market. The ITS on the mapping of ECAIs (published in the Official Journal of the European Union on October 12, 2016) is highlighted as promoting competition as it enables European banks and insurers to use smaller CRAs. The Commission commented that such mapping could create future opportunities for the use of smaller CRAs and possibly stimulate market development. The Report also examined the impact and effectiveness of the provisions in the CRA Regulation on governance and internal procedures; such as the prevention of conflicts of interests and alternative remuneration models. The current market is dominated by the three largest CRAs (S&P, Moody's and Fitch) and the Commission noted that it is of the utmost importance to ensure the good conduct of such CRAs. The Report also considered the establishment of a European CRA and whether such an institution would be a feasible alternative for the assessment of sovereign debt and the creation of a European creditworthiness rating as the foundation for all other creditworthiness ratings. The Commission considers that the establishment of such common agencies would likely add more costs and would not bring any additional value to the ratings market in practice. The Commission concludes that the CRA Regulation will have a long-term positive impact on the credit ratings market. Not all provisions of the CRA Regulation have been implemented and therefore further assessment to determine the full impact of the legislation will need to be conducted.

The European Commission's report is available at: http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-664-EN-F1-1.PDF?_sm_au_=iVVHVWj7jP3TtnsN.

International Organization of Securities Commissions Consults on Other Products and Services Offered by Credit Rating Agencies

On November 7, 2016, the International Organization of Securities Commissions published a consultation paper on the use of non-traditional products or services offered by CRAs. IOSCO considers that these types of products and services are important because market participants use them to make investment and other credit-related decisions and issuers and obligors use them to make decisions about whether to obtain a credit rating from a particular CRA. Examples of the products and services include private ratings, confidential ratings, expected ratings, indicative ratings, prospective ratings, provisional ratings, preliminary ratings, credit default swap spreads, bond indices, research and portfolio assessment tools. IOSCO groups these products and services into six categories, providing descriptions for each category, namely: research, private, non-final, part of rating process, outside rating process and hybrids. IOSCO is seeking views on whether the other CRA products identified in the six groups are consistent with CRAs' and their users' understanding of the CRA industry, including whether the Code of Conduct and IOSCO CRA Principles apply to other CRA products. The consultation closes on December 5, 2016.

View the consultation paper at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD547.pdf.

Cyber Security

US Federal Reserve Board, Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation Issue Advanced Notice of Proposed Rulemaking on Enhanced Cyber Risk Management Standards

On October 19, 2016, the US Federal Reserve Board, OCC and FDIC jointly released an advanced notice of proposed rulemaking seeking comments on enhanced cybersecurity risk-management and resilience standards. The new rule would apply to any depository institution or holding company with consolidated assets of at least $50 billion, foreign banking organizations with total US assets of at least $50 billion and financial infrastructure companies and nonbank financial companies supervised by the Federal Reserve Board.

The ANPR notes that the enhanced standards are not intended to replace Uniform Rating System for Information Technology (URSIT) as a mechanism for judging IT risks, but instead are intended to inform the cyber-related elements of the URSIT system. The proposed rule would establish five categories of standards that would apply to the IT system of a covered institution: (i) cyber risk governance—how an institution creates and maintains a cyber risk strategy; (ii) cyber risk management—identifying, monitoring, managing and reporting on cyber risk; (iii) internal dependency management—managing risks in an institution's workforce, data, technology or facilities; (iv) external dependency management—managing risks in an institution's relationships with outside vendors, suppliers and service providers; and (v) incident response, cyber resilience and situational awareness—planning for, responding to and recovering from cyber incidents.

The proposed rule also has a two-tiered approach, where the five categories of enhanced standards would apply to all IT systems of covered entities and a higher set of "sector-critical standards" that would apply to those IT systems of covered entities that are critical to the financial sector. Systems that are deemed "critical to the functioning of the financial sector" would be required to implement the most effective commercially available controls, and would be required to have, and be examined for, a two-hour recovery window after disruptions.

Comments on the proposal are due January 17, 2017.

The ANPR is available at: https://www.gpo.gov/fdsys/pkg/FR-2016-10-26/pdf/2016-25871.pdf.

G7 Publishes Fundamental Elements of Cyber Security for the Financial Sector

On October 11, 2016, the G7 Cyber Expert Group published a statement on the fundamental elements of cyber security in the financial sector. The high-level elements are intended to assist a financial sector entity to design and implement their cyber

security strategy and operating framework as well as to guide public authorities in developing their policies. The elements include the establishment of a cybersecurity strategy and operating framework, governance, risk and control assessments, monitoring, timely and proportionate responses to a cyber incident, the recovery of operations and remediation following a cyber security event, sharing information and reviewing the strategy and framework regularly to address relevant changes. The elements are not legally binding.

The elements of cyber security are available at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/559186/G7_Fundamental_Elements_Oct_2016.pdf.

Derivatives

US Commodity Futures Trading Commission Approves Rule Amending Chief Compliance Officer Annual Report Timing for Certain Registrants

On November 10, 2016, the US Commodity Futures Trading Commission announced its unanimous approval of a final rule amending CFTC regulation 3.3 to provide for a 90-day window after the end of an institution's fiscal year for the filing of chief compliance officer annual reports. The amendment applies to futures commission merchants, swap dealers and major swap participants. The amendment also clarifies the filing requirements for swap dealers and major swap participants in jurisdictions for which the CFTC has granted a comparability determination on the reports' contents. The rule will be effective upon publication in the Federal Register.

The final rule is available at: http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-27525a.pdf.

US Commodity Futures Trading Commission Signs Counterpart to Memorandum of Understanding with Canadian Authority in Newfoundland and Labrador

On November 2, 2016, the CFTC announced that Chairman Massad had signed the Counterpart to a Memorandum of Understanding with the Superintendent of Securities for Newfoundland and Labrador and the Canadian Minister for Intergovernmental Affairs. The MOU was originally executed on March 25, 2014, and the scope of the MOU contemplates cooperation on regulation of markets and organized trading platforms, central counterparties, trade repositories and intermediaries, dealers and other market participants.

The text of the Counterpart to the MOU is available at:
http://www.cftc.gov/idc/groups/public/@internationalaffairs/documents/file/cftc-snl-supervisorymou110116.pdf.

US Commodity Futures Trading Commission Issues Orders of Registration to Five Foreign Boards of Trade to Permit Trading by Direct Access from the US

On October 31, 2016, the CFTC issued Orders of Registration (Orders) to the following Foreign Boards of Trade (FBOT): (i) Eurex Deutschland; (ii) CME Europe Limited; (iii) ICE Futures Europe; (iv) The London Metal Exchange; and (v) London Stock Exchange plc. Under the Orders, each of the FBOTs is permitted to provide identified members or other participants located in the US with direct access to its electronic order entry and trade matching system.

The CFTC issued the Orders under part 48 of the CFTC's regulations, which provides that such Orders may be issued to an FBOT that possesses, among other things, the attributes of an established, organized exchange and is subject to continued oversight by a regulator that provides comprehensive supervision and regulation that is comparable to the supervision and regulation exercised by the CFTC.

Upon review of their applications, the CFTC determined that these FBOTs have demonstrated their ability to comply with the requirements of CFTC regulations, including CFTC regulation 48.8, which outlines the conditions of registration. This regulation also permits any additional conditions that the CFTC deems necessary and may impose after appropriate notice and opportunity to respond. Each FBOT shall also continue to fulfill each of the representations it made in support of its applications for registration.

The CFTC press release, which includes links to the orders, is available at: http://www.cftc.gov/PressRoom/PressReleases/pr7475-16.

Delay to EU Clearing Obligation for Certain Financial Institutions Recommended

On November 14, 2016, ESMA published a Report recommending that the clearing obligation for financial institutions with low trading volumes be delayed until June 21, 2019. The European Market Infrastructure Regulation imposes a clearing obligation on certain classes of derivatives. ESMA has so far assessed that the clearing obligation should apply to interest rate swaps denominated in seven currencies (EUR, GBP, JPY, USD, NOK, PLN and SEK) and to two classes of credit default swaps indices: iTraxx Europe Main and iTraxx Europe Crossover. The clearing obligation is being phased in, with those with the largest derivatives trading activity becoming subject to the obligation first. The obligation to clear OTC IRS denominated in the G4 currencies (EUR, GBP, JPY and USD) applied to entities that are clearing members of EU CCPs from June 21, 2016.

ESMA's Report includes draft RTS which would amend the timing of the clearing obligation for financial institutions with a low volume of derivatives trading activity (namely those in category three). ESMA is proposing that the clearing obligation for these financial institutions would apply from June 21, 2019 for the clearing of OTC IRS and CDS. The European Commission has three months to decide whether to endorse the amending RTS.

View the final report at: https://www.esma.europa.eu/press-news/esma-news/esma-asks-commission-delay-central-clearing-small-financial-counterparties.

International Bodies Publish Second Consultation on Harmonization of Key OTC Derivatives Data Elements

On October 19, 2016, the Committee on Payments and Market Infrastructures and IOSCO published a joint consultative report on the harmonization of a second batch of key OTC derivatives data elements. The report is in response to the 2009 G20 agreement that all OTC derivatives contracts would be reported to trade repositories — part of the G20's overall commitment to reforming the OTC derivatives markets to improve transparency, mitigate systemic risk and prevent market abuse. This consultation complements the consultation on Harmonization of key OTC derivatives data elements (other than UTI and UPI), published in September 2015 and other reports on the Harmonization of the Unique Product Identifier. The purpose of this consultation is to develop guidance for regulators on definitions for the second batch of critical data elements that are important for global consistency and the meaningful aggregation of trade repository OTC derivatives transactions data. The consultation seeks views on matters including: (i) proposed definitions of key data elements; (ii) whether the proposed definitions cover different market practices globally; (iii) whether any alternative approaches to those mentioned in the report would better achieve the stated objectives; and (iv) whether the consultative guidance is unambiguous. A consultation on the third batch of key data elements is expected in 2017. Responses to the proposals are due by November 30, 2016.

The latest consultation paper is available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD545.pdf?_sm_au_=iVVHVWj7jP3TtnsN and the first consultation paper is available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD503.pdf?_sm_au_=iVVHVWj7jP3TtnsN.

Enforcement

Former Investment Portfolio Manager Admits Insider Dealing

On November 2, 2016, the Financial Conduct Authority announced that Mark Alexander Lyttleton had pleaded guilty to two counts of insider dealing at Southwark Crown Court. The FCA charged Mr. Lyttleton with three counts of insider dealing pursuant to the Criminal Justice Act 1993 on September 29, 2016. The third charge was subsequently dropped. Mr. Lyttleton was an Investment Portfolio Manager at Blackrock Investment Management (UK) Ltd. Mr. Lyttleton had acted on inside information he obtained by working on deals relating to the relevant stocks and by being a party to conversations conducted by colleagues. The criminal offence of insider dealing is punishable by a fine or up to seven years imprisonment. The Judge, Anthony Leonard,

told Mr. Lyttleton that his pleading guilty at an early stage of the prosecution process will be taken into account and to his advantage. Mr. Lyttleton will be sentenced on December 21, 2016.

The FCA's announcement is available at: https://www.fca.org.uk/news/press-releases/mark-lyttleton-pleads-guilty-insider-dealing.

UK Legislation Implements Financial Services and Markets Act 2000 Updates to Secondary Legislation

On October 24, 2016, The Financial Services (Banking Reform) Act 2013 (Consequential Amendments) (No. 2) Order 2016 was made. The Order amends secondary legislation as a result of updates to the Financial Services and Markets Act 2000 relating to disciplinary powers for the FCA and Prudential Regulation Authority applying to the misconduct of individuals and the senior manager's regime. The Order also amends FSMA secondary legislation which specifies a "qualifying EU provision" applied for the purposes of determining whether a person has been knowingly concerned in a contravention of a relevant requirement by an authorized person under the new section of FSMA relating to FCA and PRA powers. The Order will enter into force on November 21, 2016.

The Order and Explanatory Statement is available at:
http://www.legislation.gov.uk/uksi/2016/1023/pdfs/uksi_20161023_en.pdf?_sm_au_=iVVHVWj7jP3TtnsN.

Financial Crime

US Financial Crimes Enforcement Network Publishes Technical Amendments to Anti-Money Laundering Regulations

On November 4, 2016, the US Financial Crimes Enforcement Network published technical amendments to anti-money laundering (AML) regulations implemented pursuant to the Bank Secrecy Act (BSA). The final FinCEN rule, which became effective November 4, 2016, removes and replaces outdated references to obsolete BSA forms, removes references to outdated forms of recordkeeping storage media and replaces other outdated terms and references.

The text of the final rule is available at: https://www.gpo.gov/fdsys/pkg/FR-2016-11-04/pdf/2016-26557.pdf.

US Financial Crimes Enforcement Network Issues Advisory and Frequently Asked Questions on Reporting Cyber-Events in Suspicious Activity Reports

On October 25, 2016, FinCEN issued an Advisory and related Frequently Asked Questions (FAQs) regarding the reporting of cyber-events, cyber-enabled crime and cyber-related information through Suspicious Activity Reports (SARs).

According to FinCEN, while suspicious transactions may not always involve a cyber-event, relevant cyber-related information should still be included in SARs when available (e.g., Internet Protocol (IP) addresses and accompanying timestamps associated with fraudulent wire transfers being reported). Similarly, the FinCEN guidance provides that when suspicious transactions do involve cyber-events, a financial institution should include in SARs all relevant and available information regarding the suspicious transactions and the cyber-event - including the type, magnitude and methodology of the cyber-event as well as signatures and facts on a network or system that indicate a cyber-event. The advisory also encourages collaboration between in-house BSA/AML and cybersecurity units and sharing information with other financial institutions to the extent permitted under Section 314(b) of the USA PATRIOT Act.

Among other things, the FAQs explain the circumstances in which an SAR must be filed in connection with an unsuccessful cyber-event and provide for the submission of a single, cumulative SAR to report multiple cyber-events that are similar in nature and share common identifiers or are believed to be related, connected or part of a larger scheme.

The advisory and FAQs are available at: https://www.fincen.gov/sites/default/files/advisory/2016-10-25/Cyber%20Threats%20Advisory%20-%20FINAL%20508_2.pdf.

Final EU Guidelines on Market Soundings and Delaying Disclosure of Inside Information

On November 10, 2016, ESMA published updated translations of its final Guidelines on the implementation of the Market Abuse Regulation for persons receiving market soundings and on delayed disclosure of inside information. ESMA had published the translations on October 20, 2016 but due to a linguistic issue with the Polish version had to re-publish all of the translations. The substantive content of the Guidelines is unchanged. The publication of the translations triggers the application of the Guidelines and so the Guidelines will now apply from January 10, 2017 instead of December 20, 2016. ESMA consulted on the draft Guidelines in January 2016 and published final versions of the Guidelines in July 2016.

MAR requires ESMA to issue guidelines for market sounding receivers concerning the factors that should be taken into account, when information is disclosed to them as part of a market sounding, to determine whether the information amounts to inside information. The Guidelines outline the steps that such persons should take if inside information is disclosed to them and the records that such persons should maintain to demonstrate they have complied with the obligations under MAR.

MAR requires issuers to inform the public as soon as possible of inside information which directly concerns them. ESMA's Guidelines outline the legitimate interests of issuers to delay disclosure of inside information. The Guidelines also provide a non-exhaustive indicative list on the legitimate interests of the issuer that are likely to be prejudiced by the immediate disclosure of inside information and the situations in which delay of disclosure is likely to mislead the public.

The Guidelines on market soundings apply to persons receiving a market sounding and to national regulators. The Guidelines on delaying disclosure of inside information apply to issuers and to national regulators. National regulators must confirm to ESMA whether they intend to comply with each of the Guidelines by January 10, 2016.

The Guidelines are available at: https://www.esma.europa.eu/press-news/esma-news/esma-updates-mar-guidelines-market-soundings.

UK Government Consults on Beneficial Ownership Register for Money Laundering Purposes

On November 3, 2016, the UK Government Department for Business, Energy & Industrial Strategy launched a consultation on the requirement to maintain a central register of beneficial ownership information of corporate and other legal entities under the Fourth Money Laundering Directive. The Fourth Money Laundering Directive requires member states to hold information on beneficial ownership of corporate and other legal entities incorporated in their territory in a central register and that the information should be available to specific EU authorities and organizations. Since April 6, 2016, the UK has required UK companies, limited liability partnerships and societates europaeae to establish and maintain a register of persons with significant control over them and since June 30, 2016, those entities have been required to file such information with Companies House where it is publicly available. The BEIS is consulting on amendments and additions to the UK's current PSC regime that are needed to properly implement the 4MLD requirements, including, requiring entities to update information in the PSC register every six months of a change (instead of every 12 months) and making the proportion of suppressed PSC information which is not publicly available through Companies House available to banks and investment firms. BEIS also proposes that the determination of whether an entity is in scope of the Directive is that it must be UK-incorporated and constitutionally capable of having a beneficial owner. The consultation closes on December 16, 2016. Member states are required to transpose 4MLD by June 26, 2017.

The Discussion Paper is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565095/beis-16-38-4th-money-laundering-directive-transposition-discussion-paper.pdf.

You may like to view our client now on the current UK PSC Regime at: http://www.shearman.com/~/media/Files/NewsInsights/Publications/2016/03/The-New-PSC-Regime-MA-032316.pdf.

Proposed Amendments to UK Proceeds of Crime and Terrorism Legislation

On October 13, 2016, a Bill was introduced in the UK Parliament proposing amendments to the Proceeds of Crime Act 2002 and Terrorism Act 2000. The Bill forms part of the UK Government's Action Plan to counter money laundering and the funding of terrorism. The Government launched a consultation in April this year on its proposals to overhaul the UK approach to AML and CTF. The Government's Response to the initial consultation was published on the same day that the Bill was introduced.

The Bill, amongst other things, introduces Unexplained Wealth Orders in England, Wales and Northern Ireland. These would require a person who is suspected of involvement in or associated with serious criminality or overseas politically exposed persons to explain the origin of their assets that appear disproportionate to their income. The Bill also creates requirements for disclosure orders in connection with investigations into terrorist financing offenses, introduces two new corporate offenses for failing to prevent the facilitation of tax evasion. These measures are being introduced in response to the so-called "Panama Papers" scandal and aim to hold organizations and corporations to account where their employees engage in actions to assist customers in evading tax. In addition, civil recovery powers (ability to recover property where there has not been a criminal conviction, but where it can be shown on the balance of probabilities that that property has been obtained through unlawful conduct) are to be extended to the FCA and HM Revenue and Customs. The Bill will also enable the 'moratorium' period contained in the Proceeds of Crime Act 2002 to be renewed, upon application to the court, for up to 186 days (from expiration of the initial 31 day period), and create a power for the NCA to request further information from any person in the regulated sector. Legally privileged information is exempted from the scope of this requirement.

The Bill is available at: http://www.publications.parliament.uk/pa/bills/cbill/2016-2017/0075/17075.pdf, the explanatory memorandum is available at: http://www.publications.parliament.uk/pa/bills/cbill/2016-2017/0075/en/17075en.pdf and the Government Response is available at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/559957/Action_Plan_for_anti_money-laundering_and_counter-terrorist_finance_-_consultation_on_legislative_proposals.pdf.

UK Financial Conduct Authority Takes Action Against Sonali Bank for Money Laundering Failings

On October 12, 2016, the FCA published the final notices issued to Sonali Bank (UK) Limited and its former Money Laundering Reporting Officer, Mr. Steven Smith for AML failings. SBUK was fined £3,250,600 and restricted from accepting deposits from new customers for a period of 168 days. Mr. Smith was fined £17,900 and banned from performing the senior management functions of an MLRO or compliance oversight or the money laundering reporting controlled function in any UK regulated firm.

The FCA found that SBUK had breached Principle 3, which requires that a firm take reasonable steps to ensure that it has organized its affairs responsibly and effectively, with adequate risk management systems. The bank had failed, amongst other things, adequately to put AML monitoring procedures into place, to take steps to ensure that the importance of AML compliance was entrenched throughout the business, to implement oversight of the MLRO department or to ensure that its MLRO department was sufficiently resourced. SBUK also breached Principle 11, which requires firms to deal with the FCA in an open and cooperative way and to disclose to the FCA anything relating to the firm of which the FCA would reasonably expect notice. The bank had failed to notify the FCA in a timely manner of a suspected significant fraud committed by one of its employees against one of its customers.

The FCA found that Mr. Smith had breached Statement of Principle 6 for Approved Persons, which requires an approved person to exercise due skill, care and diligence in managing the business of the firm for which he is responsible. It also found that Mr. Smith had been knowingly involved in SBUK's breach of Principle 3. Mr. Smith had, amongst other things, failed to ensure that SBUK's senior management was aware of the issues with the bank's AML systems and procedures or of the likely effects that the lack of resourcing in that area would have and had failed to put adequate systems and procedures in place to ensure the ongoing assessment of AML risks posed by individual customers. The FCA acknowledged that Mr. Smith had taken some steps to improve the situation at the bank and that he was seriously overworked but still considered his failings to be particularly serious.

The final notice issued to SBUK is available at: https://www.fca.org.uk/publication/final-notices/sonali-bank-uk-limited-2016.pdf and the final notice issued to Mr. Smith is available at: https://www.fca.org.uk/publication/final-notices/steven-smith-2016.pdf.

Financial Action Task Force Publishes Approach to Criminalizing Terrorist Financing

On October 21, 2016, the Financial Action Task Force published Guidance to assist countries on the content required to comply with the obligation to criminalize terrorist financing. The Guidance builds on FATF Recommendation 5, which provides measures to assist countries in fulfilling their legal requirements under the International Convention for the Suppression of the Financing of Terrorism 1999 and relevant United National Security Council Resolutions. The Guidance outlines various aspects that offenses relating to terrorist financing must cover when implemented by national legal systems. For example, a terrorist financing offense must cover all types of willful terrorist financing activity. The Guidance specifies that the requirement of willful conduct is largely based on the Terrorist Financing Convention and requires a mental element or mens rea, such that the conduct is deliberately committed with an unlawful intention. The Guidance also sets out the bases and rationale of the Convention and Resolutions to assist countries in the implementation of such requirements. The Guidance focuses on the specific elements of the Recommendation that have most commonly been identified as creating particular implementation challenges and provides examples of how such requirements have been implemented by differing legal systems.

The Guidance is available at: http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-Criminalising-Terrorist-Financing.pdf?_sm_au_=iVVHVWj7jP3TtnsN and the FATF Recommendations are available at: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf?_sm_au_=iVVHVWj7jP3TtnsN.

Financial Action Task Force Publishes Guidance on Correspondent Banking Services

On October 21, 2016, the FATF published Guidance on correspondent banking services, which it has developed in collaboration with the FSB. The Guidance is in response to increased concerns about so-called "de-risking," whereby financial institutions avoid, rather than manage, the risks associated with money laundering or terrorist financing by terminating business relations with entire regions or classes of customers. The FATF considers that de-risking is inconsistent with FATF Recommendations, that it has negatively impacted correspondent banking and that it may result in financial transactions being directed into less regulated areas which would reduce transparency and increase exposure to money laundering and terrorist financing risks. The Guidance follows a statement issued by FATF in June 2015 which clarified that when correspondent banking relationships are established, correspondent banks are required to perform customer due diligence on the respondent institution but are not required to conduct due diligence on each individual customer of their respondent institution. The FATF Recommendations require financial institutions to identify and manage the risks that are associated with correspondent banking services by adopting a risk-based approach to implementing AML and counter-terrorist financing measures. The Guidance explains the FATF's requirements in the context of correspondent banking services. The Guidance notes that not all correspondent banking relations are subject to the same level of money laundering or terrorist financing risks and specifies that due diligence measures must be commensurate to the nature of the risks that apply to the firm. The FATF are aware that prudential and regulatory requirements as well as differing national sanction regimes also drive de-risking, however, this (and other factors that contribute to re-risking) are beyond the FATF's mandate. Therefore, the Guidance aims to clarify how to implement the FATF risk-based approach properly and effectively.

The Guidance is available at: http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-Correspondent-Banking-Services.pdf?_sm_au_=iVVHVWj7jP3TtnsN and the FATF Recommendations are available at: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf?_sm_au_=iVVHVWj7jP3TtnsN.

Financial Market Infrastructure

Federal Reserve Bank of New York Releases Operating Policy on Market Operations Counterparties

On November 9, 2016, the New York Fed released a statement of its policies towards managing its open market operations counterparty relationships with private entities, which includes primary dealers in US Treasury securities. Generally, the New York Fed seeks to transact with regulated banks and broker-dealers of a sufficient scale that do not cause an undue level of credit risk exposure. The policy contains a series of expectations that the New York Fed has for counterparties, which includes following Treasury Market Practices Group or Foreign Exchange Committee best practices, providing insights and information to the New York Fed, meeting regulatory requirements and having a sound compliance program in place. The policy also discusses the behavioral expectations the New York Fed has for counterparties, which include that the firm participates competitively in operations where the firm is selected as a counterparty, maintains the required scale and continues to meet the standards of the New York Fed in terms of legal services, transaction support and resiliency and continuity. Under the revised standards for primary dealers, the amount of required regulatory net capital (as computed in accordance with the net capital rule of the SEC) for a broker-dealer has been reduced from $150 million to $50 million.

The New York Fed's policy is available at: https://www.newyorkfed.org/markets/counterparties/policy-on-counterparties-for-market-operations.

HM Treasury Consults on New Rules for Financial Market Infrastructure Special Administration Regime

On November 11, 2016, HM Treasury published a consultation paper on rules for a financial market infrastructure special administration regime. A form of special administration for certain financial market infrastructure companies, excluding CCPs, was introduced by The Financial Services (Banking Reform) Act 2013, known as FMI administration. CCPs are already subject to the special resolution regime in the Banking Act 2009. The entities covered by the FMI administration regime are non-CCP operators of payment systems and central securities depositories. HM Treasury is seeking views on new rules, and modifications to existing general insolvency rules, required to facilitate the effective functioning of an FMI administration. The proposed rules outline the application procedure for an FMI administration order and specify the application of the Insolvency (England and Wales) Rules 2016 with modifications. An application for FMI administration must demonstrate that the company is unable to pay its debts, likely to be unable to pay its debts or that it would be just and equitable (disregarding the objective of the FMI administration) to wind up the company. The new and modified insolvency rules set out the functions that the FMI administrator would be required to perform, such as the provision of a statement of affairs of the company, and the determination of the FMI administrator's remuneration. Responses to the consultation are due by January 15, 2017. HM Treasury will update rules following receipt of comments and will then consult the Insolvency Rules Committee prior to the rules being implemented in 2017. The UK Government plans to bring the new FMI administration provisions into force concurrently with the FMI administration rules.

The consultation page is available at: https://www.gov.uk/government/consultations/rules-on-ensuring-the-effective-functioning-of-a-financial-market-infrastructure-special-administration-regime/rules-on-ensuring-the-effective-functioning-of-a-financial-market-infrastructure-special-administration-regime, the draft rules are available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/567464/Financial_Market_Infrastructure_Administration_Rules_2017.pdf and the draft commencement order is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/567466/Financial_Services__Banking_Reform__Act_2013_.pdf.

Final EU Technical Advice Under Benchmark Regulation Published

On November 10, 2016, ESMA published its final Technical Advice to the European Commission on certain aspects of the EU Benchmark Regulation. The Benchmark Regulation sets out the authorization and registration requirements for benchmark administrators, including third-country entities, and the requirements for governance and control of administrators. It provides for different categories of benchmarks depending on the risks involved, imposes additional requirements on benchmarks considered to be "critical" and gives powers to national regulators to mandate, under certain conditions, contributions to or the administration

of critical benchmarks. The European Commission requested the Technical Advice from ESMA in February 2016. The Technical Advice covers: (i) the definition of benchmarks; (ii) measurement of the reference value of benchmarks; (iii) criteria for the identification of critical benchmarks; (iv) endorsement of a benchmark or family of benchmarks provided in a third country; and (v) transitional provisions.

The majority of the Benchmark Regulation will apply from January 1, 2018. Certain provisions, giving powers to ESMA to prepare draft technical standards and to the Commission to adopt delegated legislation, applied from June 30, 2016. ESMA intends to publish its final draft technical standards due under the Benchmark Regulation by April 1, 2017.

View the Technical Advice at: https://www.esma.europa.eu/press-news/esma-news/esma-finalises-advice-future-rules-financial-benchmarks.

Financial Services

US Commodity Futures Trading Commission Issues Proposals to Automated Trading Regulations

On November 4, 2016, the CFTC approved the issuance of a notice of proposed rulemaking, seeking to enhance the CFTC's previous notice of proposed rulemaking for automated trading regulation, which proposed a series of risk controls, transparency measures and other safeguards applicable to automated trading on all designated contract markets. Among other things, the supplemental proposal revises the proposed risk control framework of Reg AT to require pre-trade risk controls at two levels, with all so-called "AT Persons" and with futures commission merchants, rather than three. In addition, the proposed rule would limit access to source code by the Division of Market Oversight to special calls issued by the Commission itself. CFTC Chairman Timothy Massad and CFTC Commissioner Sharon Bowen each issued statements in favor of the supplemental proposal. Commissioner J. Christopher Giancarlo issued a statement of dissent, asserting that the supplemental notice does not go far enough in simplifying and streamlining the regulation.

The text of the proposed rule is available at: http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/federalregister110416.pdf; the fact sheet for the proposed rule is available at: http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/regat_factsheet110316.pdf and the FAQs regarding the proposed rule are available at: http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/regat_qa110316.pdf.

The Statement of Chairman Massad is available at: http://www.cftc.gov/PressRoom/SpeechesTestimony/massadstatement110416; the statement of Commissioner Bowen is available at: http://www.cftc.gov/PressRoom/SpeechesTestimony/bowenstatement110416 and the statement of dissent by Commissioner Giancarlo is available at: http://www.cftc.gov/PressRoom/SpeechesTestimony/giancarlostatement110416.

US Federal Reserve Board Approves Fee Schedule for Federal Reserve Bank Priced Services

On October 25, 2016, the US Federal Reserve Board announced the approval of fee schedules, effective January 3, 2017, for payment services the Federal Reserve Banks provide to depository institutions (priced services). The Monetary Control Act of 1980 requires that the Federal Reserve Board establish fees to recover the costs of providing priced services, including imputed costs, over the long run, to promote competition between the Reserve Banks and private-sector service providers.

The Reserve Banks project that they will recover 100 percent of their priced services costs in 2017. The Reserve Banks expect to fully recover actual and imputed expenses, including profit that would have been earned if a private business firm provided the services. Overall, the Reserve Banks estimate that the price changes will result in a 3.2 percent average price increase. In particular, the Reserve Banks estimate that the price changes will result in: (i) a 5.3 percent average price increase for FedACH® customers; (ii) a 3.3 percent average price increase for Fedwire® Funds customers; (iii) an 18 percent average price increase for Fedwire Securities Service customers; and (iv) an 8.1 percent average price increase for FedLine® customers. The fees will

remain unchanged for the Reserve Banks' National Settlement Service and check service. The 2017 fee schedule for each of the priced services is available on the Federal Reserve Banks' financial services website at FRBservices.org.

The Federal Register notice is available at: http://www.federalreserve.gov/newsevents/press/other/other20161025a1.pdf.

US Federal Reserve Board Survey Finds that Commercial and Industrial Loan Standards Unchanged, Residential Mortgage Loan Standards Eased

The US Federal Reserve Board's October 2016 Senior Loan Officer Opinion Survey revealed that, in general, banks did not change standards on commercial and industrial loans while they tightened standards on commercial real estate loans over the third quarter; banks also reported easing of standards on residential mortgage loans, whether or not the loans were eligible for purchase by government-sponsored enterprises. Banks also noted a weakening of demand from middle- and large-market firms for commercial loans and stronger demand for construction and land development loans in the CRE space. The Federal Reserve Board also asked special questions on commercial and industrial loan demand, and banks indicated that they do not expect changes in demand.

The Federal Reserve Board's survey report is available at: https://www.federalreserve.gov/boarddocs/SnLoanSurvey/201611/default.htm.

UK Financial Conduct Authority Seeks Input in Developing Its Future Strategy

On October 26, 2016, the FCA launched a consultation on its approach to regulation. The consultation document, entitled 'Our future mission', asks a number of questions about the FCA's approach to regulation and aims to obtain feedback to assist in developing the FCA's future strategy. The consultation covers a wide range of topics, including, amongst others, consumer protection, the interaction between public policy and regulation, competition, the scope of regulation and whether the FCA Handbook should be reviewed. The consultation closes on January 26, 2017.

The consultation document is available at: https://www.fca.org.uk/publication/corporate/our-future-mission.pdf.

UK Regulator Cancels Proposed Secondary Annuities Market

On October 18, 2016, the UK Government announced that it would not be taking forward its plans to create a secondary market for consumers to sell their annuity income. The market was to 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. In April this year, the UK Government and the FCA consulted on the proposed regulatory framework for the secondary annuities market. The UK Government's view is that a balance between creating conditions for a competitive market with multiple buyers and sellers of annuities combined with sufficient consumer protections could not be achieved.

The press release is available at: https://www.gov.uk/government/news/government-cancels-plans-to-create-a-market-for-secondary-annuities, HM Treasury's consultation 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 and the FCA's consultation paper is available at: https://www.fca.org.uk/publication/consultation/cp16-12.pdf.

FinTech

US Office of the Comptroller of the Currency Issues Responsible Innovation Framework

On October 26, 2016, the OCC announced it will establish an office dedicated to responsible innovation and implement a formal framework to improve the agency's ability to identify, understand and respond to financial innovation affecting the federal banking system.

The Office of Innovation will be headed by a Chief Innovation Officer assigned to OCC Headquarters with a small staff located in Washington, New York and San Francisco. The office will be the central point of contact and clearinghouse for requests and information related to innovation. It will also implement other aspects of the OCC's framework for responsible innovation, which include: (i) establishing an outreach and technical assistance program for banks and nonbanks; (ii) conducting awareness and training activities for OCC staff; (iii) encouraging coordination and facilitation; (iv) establishing an innovation research function; and (v) promoting interagency collaboration.

The OCC expects the office to begin operations in first quarter 2017. To support implementation of the framework, the agency has named Beth Knickerbocker acting Chief Innovation Officer.

The OCC's Recommendations and Decisions for Implementing a Responsible Innovation Framework is available at: https://occ.gov/topics/bank-operations/innovation/recommendations-decisions-for-implementing-a-responsible-innovation-framework.pdf.

US Consumer Financial Protection Bureau Releases Project Catalyst Report Highlighting Consumer Innovation

On October 24, 2016, the US Consumer Financial Protection Bureau released a report highlighting market innovations with the potential for consumer benefits as part of its Project Catalyst, a collaborative effort for the CFPB to research and encourage new or emerging projects that are consumer-friendly. The CFPB highlighted how Project Catalyst has led to the regulator engaging with companies and entrepreneurs that are developing new financial products—the report highlighted how the placing of the CFPB's "trial disclosure waiver" program and no-action letter policy under the auspices of Project Catalyst has led to the CFPB better supporting innovation.

The report also highlighted a number of specific innovations that Project Catalyst has learned of or supported. The report praised efforts to employ non-traditional data sources and new analysis method to expand credit access to poorer customers or those with no credit history, as well as efforts to encourage the sharing of consumer data to allow for faster verification and approvals and personal financial management offerings. Furthermore, the report highlighted new financial products, from lower-interest student loan refinancing to more modern mortgage servicing platforms and peer-to-peer payment systems.

The report concluded by characterizing Project Catalyst as a "foundation" for the CFPB promoting consumer-friendly innovation and increasing outreach and collaboration efforts between the financial industry and the CFPB as a regulator.

The CFPB press release is available at: http://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-first-ever-project-catalyst-innovation-highlights-report/ and the CFPB Report is available at: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/102016_cfpb_Project_Catalyst_Report.pdf.

US Consumer Financial Protection Bureau Director Discusses Financial Innovation

On October 23, 2016, CFPB Director Richard Cordray delivered a speech at Money 20/20, focused on how financial innovation can better serve consumers. Cordray noted that the CFPB, as a new agency, feels an affinity towards innovators in finance. Cordray highlighted how FinTech companies and financial institutions are developing products that "cut across" regulatory frameworks and pledged that the CFPB will continue to work with companies to encourage innovation, while ensuring that laws are complied with—he cited enforcement actions the CFPB has taken focused on deceptive conduct, while noting that the agency is not looking to punish actors for "raising novel issues" or questions that fall into "unforeseen cracks in the regulatory framework."

The majority of Cordray's remarks focused on two points: (i) how innovation can facilitate access to financial markets and products to underserved populations and (ii) how technology can help consumers better manage their own finances. He noted that technology is giving customers who remain "locked out" of the traditional banking system options beyond an all-cash economy. He also highlighted automatic or motivational tools that help encourage consumers to save and talked about various CFPB policies, including its no-action letter program that allows programs that hold promise for consumers but would be held back by

regulatory uncertainty to proceed for a defined period. Cordray concluded by arguing that the interests the CFPB and FinTech firms are aligned at a deep level, as they both require a focus on service to consumers.

Cordray's remarks are available at: http://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-richard-cordray-money-2020/.

MiFID II

Proposed EU Technical Standards on Pre-trade Transparency Requirements for Package Orders

On November 10, 2016, ESMA launched a consultation on pre-trade transparency rules for package orders under the Markets in Financial Instruments Regulation. Package transactions are transactions executed by investment firms, either on their own account or on behalf of clients, which are made up of a number of interlinked, contingent components. Their aim is to reduce transaction costs and assist in risk management. When the legislation delaying the implementation of the MiFID II package was published, MiFIR was revised specifically to require public disclosure of bid and offer prices for package orders. Definitions for package orders and package transactions were also added. National regulators are able to waive the obligation for package orders which meet certain conditions, such as where the package order includes a financial instrument for which there is not a liquid market (unless there is a liquid market for the package order as a whole). ESMA is required to prepare draft RTS by February 28, 2017, setting out the methodology for determining the package orders for which there is a liquid market. ESMA is required to assess whether packages are standardized and frequently traded in preparing the RTS.

ESMA's consultation paper considers the treatment of packages for transparency purposes, taking into account the pre-trade transparency regime for package orders in the EU and the US and sets out ESMA's proposed methodology for determining package orders for which there is a liquid market. The consultation closes on January 3, 2017. ESMA will finalize the draft RTS for submission to the European Commission by the end of February 2017.

View the consultation paper at: https://www.esma.europa.eu/press-news/esma-news/esma-consults-transparency-rules-package-orders-under-mifid-ii.

EU Consultation on Assessing the Suitability of Management

On October 28, 2016, the EBA and ESMA launched a joint consultation on proposed Guidelines on the Assessment of the Suitability of the Members of Management Body and Key Function Holders. The revised MiFID and the CRD require firms to assess the suitability of members of their management body. Firms subject to CRD must all assess the suitability of all key function holders that have a significant influence over the direction of the firm. The proposed Guidelines provide criteria for assessing the individual and collective knowledge, skills, experience, reputation, honesty, integrity and independence of members of the management body. The proposed Guidelines also include a framework for assessing whether individual members of management commit sufficient time to performing their duties, set out how diversity should be taken into account in the selection process for members of the management body and provide for appropriate financial and human resources to be allocated to induction and training.

The consultation paper is available at: http://www.eba.europa.eu/documents/10180/1639842/Consultation+Paper+on+Joint+ESMA+EBA+Guidelines+on+suitability+of+management+body+%28EBA-CP-2016-17%29.pdf.

EU Reporting Instructions Released

On October 26, 2016, ESMA issued detailed reporting instructions and XML schema under its Financial Instruments Reference Data System. FIRDS covers the requirements under both MiFIR and MAR for reference data collection, transparency reporting obligations, submission of the Double Volume Cap data and the transaction exchange reporting mechanism.

ESMA's announcement is available at: https://www.esma.europa.eu/press-news/esma-news/esma-issues-mifir-reporting-instructions.

UK Prudential Regulation Authority Confirms Rules on Passporting and Algorithmic Trading Under MiFID II

On October 27, 2016, the PRA published its final rules for transposing passporting and algorithmic trading aspects of the Markets in Financial Instruments legislative package, which comprises MiFID and MiFIR, collectively known as MiFID II. The PRA also published its responses to the feedback it received on its proposed rules which were included in the consultation paper published on March 24, 2016.

Under MiFID II, the scope of the passporting regime has been extended to include the operation of an organized trading facility (a new type of trading venue for non-equity instruments) and emissions allowances. The PRA did not receive any responses to its proposed rules on passporting although it has made some minor amendments and added a definition of 'tied agent'. The PRA's new rules will require firms that intend to extend their passports to these additional activities or investment types to notify the PRA. Existing passports will remain valid and unchanged. The PRA will use the new EU notification forms developed by ESMA and the current declaration for passport notifications under the CRD will be extended to passport notifications made under MiFID II. For firms that want to passport their MiFID activities under their CRD passport, the PRA will continue using the EBA's forms.

MiFID II also introduces new rules on algorithmic trading. The PRA is transposing the prudential requirements relating to algorithmic trading in a new part of the PRA Rulebook on Algorithmic Trading. Responses to the PRA's proposed rules related to the scope of the rules, the record-keeping requirements and the provision of direct electronic access. The PRA is not amending the scope of its rules on algorithmic trading which will apply to any relevant trading activity undertaken by regulated firms on markets outside the EEA that would have been in scope of the rules had it been located within the EEA. The PRA has decided that it will not impose any record-keeping requirements on firms in relation to their high frequency algorithmic trading activity because it does not consider it necessary to have PRA rules as well as corresponding FCA rules. The PRA is maintaining the requirement for record-keeping in relation to testing a firm's systems. However, the systems record-keeping obligations now require greater detail as to the methodological aspects of tests performed and then results and reactions to tests.

The PRA's Policy Statement is available at: http://www.bankofengland.co.uk/pra/Documents/publications/ps/2016/ps2916.pdf, the PRA's final passporting rules are available at: http://www.bankofengland.co.uk/pra/Documents/publications/ps/2016/ps2916app1.pdf and the PRA's final algorithmic trading rules are available at: http://www.bankofengland.co.uk/pra/Documents/publications/ps/2016/ps2916app2.pdf.

Payment Services

US Federal Reserve Board Secure Payments Task Force Seeks Comments from Industry Participants

On October 25, 2016, the Secure Payments Task Force, a 160-member task force convened by the US Federal Reserve Board to advance the safety, security and resiliency of the national payment system, requested comments from payment system industry participants in connection with its efforts to enhance three priority areas: (i) payment identity management; (ii) data protection and (iii) information sharing related to payments risk and fraud. For each of these focus areas, working group members have been meeting to document the current environment, the attributes of a more effective environment, the desired outcomes in each area and the barriers to implementation of recommended solutions.

The Secure Payments Task Force has been working across payment industry segments to define challenges and develop potential solutions. An online survey has been created to gather comments on how the task force is addressing challenges related to the three focus areas. The goal is to help ensure that the solutions being pursued will meet industry needs.

The survey was open for comment through November 8, 2016.

Information regarding the survey and the work of the Secure Payments Taskforce is available at: https://fedpaymentsimprovement.org/.

Draft EU Guidelines on Information Required for Authorization Applications by Payment Institutions

On November 3, 2016, the EBA published for consultation draft Guidelines on the detailed information required to be submitted with an application for authorization by payment institutions and electronic money institutions, and for the registration of account information service providers. The revised Payment Services Directive sets out the information that must be submitted to national regulators with applications for authorization or registration. The proposed Guidelines cover, amongst other things, information requirements on an applicant's program of operations, business plans, evidence of initial capital, governance and internal control mechanisms and data protection. The consultation closes on February 3, 2017.

The consultation paper is available at: http://www.eba.europa.eu/documents/10180/1646245/Consultation+Paper+on+draft+Guidelines+on+authorisation+and+registration+under+PSD2+%28EBA-CP-2016-18%29.pdf.

Recovery & Resolution

European Banking Authority Recommends Changing the Reference Point for the Target Level of National Resolution Funds

On October 31, 2016, the EBA published its final Report on the appropriate reference point for setting the target level of resolution financing arrangements required by the Bank Recovery and Resolution Directive. The BRRD provides that when a bank fails, shareholders and creditors of the bank must be the first to bear losses. To ensure the effective implementation of the other resolution tools available, member states are required to have pre-funded resolution financing arrangements, contributions to which are made by the banks in each member state. The BRRD currently provides for contributions of at least 1% of the amount of covered deposits of all the banks in a given member state by December 31, 2024. The EBA launched a consultation on its proposed approach for changing the reference point for resolution funds in July 2016.

The EBA is recommending that the basis should be changed from covered deposits to a total liabilities-based measure, specifically, total liabilities (excluding own funds) less covered deposits. The proposed methodology would align the current target level basis with that of the reference base used for the calculation for individual contributions to national resolution financing arrangements. The EBA is also recommending that if the European Commission proceeds with amending the basis for national resolution financing arrangements through a legislative proposal, it should consider adjusting the percentage of the target level and the target level basis for the Single Resolution Fund. The SRF is the combined fund that banks and investment firms that are in the Banking Union contribute to. The European Commission must now assess the Report and the EBA's recommendations and decide whether to make a legislative proposal.

View the Report at: http://www.eba.europa.eu/documents/10180/1360107/Report+on+the+appropriate+target+level+basis+for+resolution+financing+arrangements+%28EBA-OP-2016-18%29.pdf.

Draft EU Technical Standards on MREL Reporting

On October 24, 2016, the EBA published for consultation draft ITS on the reporting requirements of the minimum requirements for own funds and eligible liabilities. The ITS set out the procedures and templates for the identification and transmission of information by resolution authorities to the EBA on the MREL that has been set for each firm. The BRRD requires national resolution authorities to set individual levels of MREL for each firm. MREL is the EU equivalent of US Total Loss-Absorbing Capacity. The consultation closes on November 21, 2016.

The consultation paper is available at: http://www.eba.europa.eu/documents/10180/1633474/Consultation+Paper+on+ITS+on+MREL+%28EBA-CP-2016-15%29.pdf.

UK Bank of England Finalizes MREL Requirements

On November 8, 2016, the Bank of England published the final rules on implementing EU MREL. This is the equivalent of the US TLAC rule. Under the BRRD and related UK legislation, the BoE is responsible for directing relevant firms to maintain MREL. MREL is a minimum requirement for firms to maintain equity and eligible debt liabilities that can bear losses before and in resolution and results in a top up to standard regulatory capital requirements, similar in concept to the old Tier 3 requirements under Basel II. The requirement will apply to UK authorized banks, building societies and PRA-designated investment firms, parent undertakings of those firms that are financial holding companies and to UK authorized subsidiaries of such firms.

The BoE published its feedback to the responses it received to its consultation on MREL and a final Statement of Policy. The BoE is retaining its general approach to setting MREL with a few amendments to take feedback into account. The BoE will set MREL on a firm-by-firm basis based on the resolution strategy allotted to firms. The three resolution strategies are modified insolvency, partial transfer and bail-in. The indicative thresholds for firms that will be allocated a modified insolvency strategy have changed from 40,000 transactional accounts to a range between 40,000 and 80,000 transactional accounts. The BoE has also clarified the definition of transactional account by reference to the frequency of their use. The thresholds for the other strategies remain unchanged: £15-25 billion assets remains the threshold for the bail-in strategy. For the partial transfer strategy, the BoE will consider whether there are real prospects of the critical economic functions being transferred to a purchaser. Global Systemically Important Banks and Domestic Systemically Important Banks will be bail-in firms.

The BoE has extended the transitional period to meet final MREL by two years to January 1, 2022 on the basis that the 48-month transition deadline was removed from the MREL RTS. This means that G-SIBs with UK-incorporated resolution entities must meet an interim MREL of 16% of risk-weighted assets or 6% of leverage exposures (as per the TLAC standard) from January 1, 2019. G-SIBs and D-SIBs with UK-incorporated resolution entities must meet an interim MREL, from January 1, 2020, equivalent to the higher of two times their Pillar 1 requirements and their Pillar 2A capital requirement or two times the applicable leverage ratio requirement. Partial transfer firms must meet an interim MREL of 18% of RWAs by January 1, 2020. For modified insolvency firms, this means that the BoE will set consolidated MREL at no higher than a firm's current regulatory minimum capital requirements, with a final conformance date of January 1, 2022. Interim MRELs will be communicated to firms by the end of 2016. Firms will be asked to submit a plan of how they intend to phase in their market issuance to reach their interim MREL.

Final MRELs are still subject to review but the BoE's current end-state MREL (applicable from January 1, 2022) would require: (i) partial transfer firms, other bail-in firms and D-SIBs to meet an MREL equivalent to the higher of two times the sum of Pillar 1 or Pillar 2A or two times the applicable leverage ratio requirements; and (ii) G-SIBs to meet an MREL equivalent to the higher of two times the sum of Pillar 1 or Pillar 2A or the higher of two times the applicable leverage ratio requirements or 6.75% of leverage exposures. Capital buffers must be met in addition to MREL.

The BoE is also maintaining its approach to MREL eligibility criteria, although it has provided some additional clarifications in response to feedback. The BoE will still require structural subordination for bail-in firms, except for building societies to which contractual subordination will apply. In addition, eligible liabilities must be subject to the governing law of the jurisdiction in which the issuing entity is incorporated or include a recognition of bail-in clause.

The BoE will continue to develop its approach to other aspects of MREL such as reporting, disclosure, treatment of MREL holdings and internal MREL. Its approach to internal MREL will take into account the FSB's proposed guidance on internal TLAC which is due to be consulted on later this year. The BoE's MREL requirements should be read in conjunction with the PRA's approach to setting regulatory buffers in view of MREL.

The BoE's Statement of Policy is available at:
http://www.bankofengland.co.uk/financialstability/Documents/resolution/mrelpolicy2016.pdf.

UK Prudential Regulation Authority Confirms MREL Buffer and Threshold Conditions Policy

On November 8, 2016, the PRA published its final Supervisory Statement on the relationship between a firm's Minimum Requirement for own funds and Eligible Liabilities (MREL) and capital and leverage buffers as well as the relationship between MREL and the PRA's Threshold Conditions which are a set of minimum requirements that authorized firms must meet in order to continue carrying out their regulated activities. The PRA also provided feedback on the responses to its consultation on its proposed approach. The PRA is maintaining its proposed approach without any substantive changes but has amended the Supervisory Statement to provide clarity to firms. The PRA's approach is to prohibit firms from being able to double-count common equity Tier 1 capital towards MREL and to risk-weighted capital and leverage buffers. Some guidance has been given on enforcement: when a firm is in breach of its MREL requirements, the PRA may investigate whether that firm is failing or likely to fail to meet the Threshold Conditions, although investigation will not be automatic. The PRA's Supervisory Statement should be read in conjunction with the BoE's policy documents on setting MREL. The PRA will apply the MREL buffer and Threshold Conditions policies in line with the interim and end-state MREL dates set by the BoE. A firm that cannot meet its MREL requirement should notify the PRA promptly.

The PRA's Policy Statement on buffers and capital requirements for MREL is available at: http://www.bankofengland.co.uk/pra/Documents/publications/ps/2016/ps3016.pdf and the PRA's Supervisory Statement on buffers and capital requirements for MREL is available at: http://www.bankofengland.co.uk/pra/Documents/publications/ss/2016/ss1616.pdf.

Financial Stability Board Publishes Assessment Methodology for the Key Attributes of Effective Resolution Regimes

On October 19, 2016, the FSB published methodology for assessing the implementation of the Key Attributes of Effective Resolution Regimes for financial institutions in the banking sector. The methodology sets out the criteria to guide the assessment of a jurisdiction's bank resolution framework and its compliance with the FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions with the aim of promoting consistent assessments across jurisdictions. The Key Attributes were adopted in October 2011 and were endorsed as a new international standard for resolution regimes by the G20 Leaders at the Cannes Summit. They were supplemented in 2014 with new Annexes containing sector-specific guidance on, amongst other things, how the Key Attributes apply to insurers, financial market infrastructure and the protection of client assets in resolution. The Key Attributes apply to resolution regimes for any financial institution that could be viewed as systematically significant or critical in the event of failure. The Key Attributes also cover the resolution of financial groups and conglomerates; including holding companies of and non-regulated operational entities within a financial group or conglomerate. The Methodology would be used for the assessments performed by regulators of existing resolution regimes in their jurisdiction and any reforms to such regimes to implement the Key Attributes. It can also be applied to peer reviews of resolution regimes conducted within the FSB framework to monitor implementation by member jurisdictions. Assessments should include, amongst other things, a summary view of whether the resolution regime has the necessary scope and reflects the Key Attributes.

The Methodology is available at: http://www.fsb.org/wp-content/uploads/Key-Attributes-Assessment-Methodology-for-the-Banking-Sector.pdf?_sm_au_=iVVHVWj7jP3TtnsN and the Key Attributes are available at: http://www.fsb.org/what-we-do/policy-development/effective-resolution-regimes-and-policies/key-attributes-of-effective-resolution-regimes-for-financial-institutions/.

Securities

US Securities and Exchange Commission Adopts Final Rules to Facilitate Intrastate and Regional Securities Offerings

On October 26, 2016, the SEC adopted final rules that modernize how companies can raise money to fund their businesses through intrastate and small offerings while maintaining investor protections.

The final rules amend Securities Act Rule 147 to modernize the safe harbor under Section 3(a)(11) of the Securities Act, so issuers may continue to use state law exemptions that are conditioned upon compliance with both Section 3(a)(11) and Rule 147. The final rules also establish a new intrastate offering exemption, Securities Act Rule 147A, that further accommodates offers accessible to out-of-state residents and companies that are incorporated or organized out-of-state.

To facilitate capital formation through regional offerings, the final rules amend Rule 504 of Regulation D under the Securities Act to increase the aggregate amount of securities that may be offered and sold from $1 million to $5 million. The rules also apply bad actor disqualifications to Rule 504 offerings to provide additional investor protection, consistent with other rules in Regulation D. In light of the changes to Rule 504, the final rules repeal Rule 505 of Regulation D.

Amended Rule 147 and new Rule 147A will be effective 150 days after publication in the Federal Register. Amended Rule 504 will be effective 60 days after publication in the Federal Register. The repeal of Rule 505 will be effective 180 days after publication in the Federal Register.

The SEC press release, including links to the final rules, is available at: http://www.sec.gov/news/pressrelease/2016-226.html.

US Federal Reserve Board Announces Plans to Collect Data from Banks on Secondary Market Transactions in US Treasury Securities

On October 21, 2016, the US Federal Reserve Board announced that it plans to begin collecting data on Treasury security secondary market transactions from banks. The Federal Reserve Board intends to negotiate with the Financial Industry Regulatory Authority to potentially act as the collection agent for this data on behalf of the Federal Reserve Board. These plans are intended to complement a recent FINRA rule change, approved by the SEC, requiring broker-dealers to report secondary market transactions in Treasury securities. The release cited the Inter Agency Working Group's report on the market events of October 15, 2014, as recommending enhanced data collection activities. The Federal Reserve Board intends to seek public comment on the proposal.

The Federal Reserve Board release is available at: https://www.federalreserve.gov/newsevents/press/other/20161021a.htm.

Progress Report on Implementation of Global Securities Reforms

On October 28, 2016, IOSCO published a report on the implementation of global securities reforms. The report sets out the progress made by jurisdictions in implementing changes in securities regulation relating to hedge funds, structured products and securitization, oversight of CRAs, measures to safeguard the efficiency and integrity of markets and supervision and regulation of commodity derivative markets.

View the implementation report at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD546.pdf.

People

US Securities Exchange Commission Chair Mary Jo White Announces Departure at End of Obama Administration

On November 14, 2016, SEC Chair Mary Jo White announced that she will leave the SEC at the end of President Obama's term. The press release announcing her departure highlighted the SEC's increased efforts at investor protection and the SEC's new enforcement approaches, as well as rulemakings responding to issues raised by the financial crisis. The SEC completed all of the mandates placed upon it by the JOBS Act, as well as the majority of those under the Dodd-Frank Act under Chair White. The release also highlighted specific rulemaking initiatives under Chair White, as well as presented enforcement statistics over the past three years.

The SEC release is available at: http://www.sec.gov/news/pressrelease/2016-238.html.

US Office of the Comptroller of the Currency Appoints New Senior Deputy Comptroller for Large Bank Supervision

On November 1, 2016, the OCC appointed Morris Morgan as the OCC's Senior Deputy Comptroller for Large Bank Supervision. In this role, beginning on December 24, 2016, Mr. Morgan will direct the supervisors of the largest national banks and federal branches and agencies of non-US banks.

The OCC press release announcing the appointment is available at: https://www.occ.treas.gov/news-issuances/news-releases/2016/nr-occ-2016-140.html.

US Office of the Comptroller of the Currency Names Charles M. Steele Deputy Chief Counsel

On October 25, 2016, the OCC announced the appointment of Charles M. Steele as the agency's Deputy Chief Counsel. Mr. Steele will supervise the Administrative and Internal Law, Community and Consumer Law, Enforcement and Compliance and Litigation divisions. He will also supervise the district counsel staffs in the OCC's Southern District and Western District offices.

The OCC press release is available at: https://occ.gov/news-issuances/news-releases/2016/nr-occ-2016-132.html.

Dame Clara Furse Leaves the UK's Financial Policy Committee

On November 1, 2016, the BoE announced that Dame Clara Furse had stepped down as an external member of the Financial Policy Committee.

The announcement is available at: http://www.bankofengland.co.uk/publications/Pages/news/2016/081.aspx.

UK Bank of England Governor Set to Stay Through Brexit Transition

On October 31, 2016, the Governor of the BoE, Mark Carney, announced that he would be extending his term of office at the Bank by a year to the end of June 2019. Mr. Carney commented that the extension of his term of office would go beyond the expected time for Brexit which should help to contribute to a smooth transition to the UK's new relationship with the EU.

The announcement is available at: http://www.bankofengland.co.uk/publications/Pages/news/2016/080.aspx.

HM Treasury Director General of Financial Services Appointed

On October 24, 2016, Katharine Braddick was appointed Director General of Financial Services at HM Treasury. Ms. Braddick was previously Director for Financial Services (International and EU) at HM Treasury but has taken up her new post immediately. Ms. Braddick replaces Charles Roxborough who, in June of this year, was appointed Permanent Secretary to the Treasury.

Upcoming Events

November 18, 2016: EBA public hearing on covered bonds (registration closed November 4, 2016)

November 21, 2016: EBA public hearing on proposed technical standards under the Payment Accounts Directive (deadline for registration was October 25, 2016)

November 24, 2016: ESMA public hearing on the draft technical standards under the Securities Financing Transactions Regulation

December 12, 2016: EBA proposed technical standards on the information to be provided for the authorization of banks (registration closes on November 22, 2016)

January 5, 2017: EBA and ESMA public hearing on their proposed Guidelines on Internal Governance and Joint Guidelines on the assessment of the suitability of members of the Management Body and Key Function Holders (registration closes on December 13, 2016)

Upcoming Consultation Deadlines

November 21, 2016: ESMA discussion paper on the trading obligation for derivatives under MiFIR

November 21, 2016: EBA consultation on ITS on MREL reporting

November 28, 2016: PRA and FCA consultation on compensation and EBA Guidelines on Sound Remuneration Policies

November 30, 2016: EBA consultation on minimum amount of professional indemnity insurance for authorization under the revised EU PSD

November 30, 2016: ESMA consultation on draft secondary measures for Securities Financing Transactions Regulation

November 30, 2016: CPMI IOSCO joint consultation on the harmonization of a second batch of key OTC derivatives data elements

December 2, 2016: BoE consultation on a Code of Practice for recognized Payment Systems Operators

December 2, 2016: ESMA consultation on technical standards under the Benchmark Regulation

December 5, 2016: ESMA consultation on consolidated tape for non-equity financial instruments under MiFID II

December 5, 2016: IOSCO consultation on Other Products and Services Offered by CRAs

December 6, 2016: ESMA consultation on proposed Guidelines on trading halts under MiFID II

December 13, 2016: FCA consultation paper on proposed updates to the current appropriate qualification examination standards for financial advisers

December 16, 2016: UK Government consultation on revising the UK's persons with significant control regime to implement the EU Fourth Money Laundering Directive

December 22, 2016: EBA consultation on proposed draft technical standards supplementing the PAD

December 31, 2016: BoE consultation on reforms to Sterling Overnight Index Average Interest Rate Benchmark (SONIA)

January 3, 2017: ESMA consultation on draft RTS on package orders under MiFIR

January 4, 2017: FCA third consultation on implementation of MiFID II

January 5, 2017: HM Treasury consultation on New Rules for Financial Market Infrastructure Special Administration Regime

January 5, 2017: ESMA consultation on proposed Guidelines on management of exchanges and Data Reporting Service Providers under MiFID II

January 5, 2017: ESMA consultation on proposed Guidelines on the product governance requirements under MiFID II

January 5, 2017: ECB consultation on proposals to harmonize the exercise of options and discretions applicable to less significant firms under CRD and CRR

January 6, 2017: Comments to US federal regulatory agencies' proposed rule on loans in areas having special flood hazards – private flood insurance

January 6, 2017: EBA consultation on assessment of Information and Communication Technology risk under the Supervisory Review and Evaluation Process

January 7, 2017: EBA consultation on proposed revised ITS on supervisory reporting relating to sovereign exposures and operational risk

January 9, 2017: Comments to SEC proposed rule on proxy voting

January 9, 2017: PRA and FCA consultation on amendments to the Senior Manager & Certification Regimes

January 17, 2017: Comments to ANPR on enhanced cybersecurity risk-management and resilience standards

January 26, 2017: FCA consultation on its approach to regulation as set out in its document "Our future mission"

January 28, 2017: EBA consultation on new Guidelines on internal governance

January 28, 2017: EBA and ESMA joint consultation on proposed Guidelines on the Assessment of the Suitability of the Members of Management Body and Key Function Holders

February 2, 2017: EBA consultation on a draft design of a new prudential regime for investment firms

February 3, 2017: EBA consultation on draft Guidelines on authorization and registration under PSD2

February 8, 2017: EBA consultation on proposed technical standards on the information to be provided for the authorization of banks

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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