SHEARMAN & STERLING

FINANCIAL REGULATORY DEVELOPMENTS FOCUS

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

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Bank Prudential Regulation & Regulatory Capital

US Federal Deposit Insurance Corporation Consults on the Treatment of Reciprocal Deposits

On September 13, 2018, the U.S. Federal Deposit Insurance Corporation published a notice of proposed rulemaking and request for comments regarding a limited exception for a capped amount of reciprocal deposits from treatment as brokered deposits. In general, brokered deposits are treated in a restrictive or adverse manner for various regulatory purposes. Most significantly, an FDIC-insured institution that is less than adequately capitalized is prohibited from accepting brokered deposits. Reciprocal deposit arrangements generally permit a bank to accept a large deposit in excess of FDIC insurance limits and place the excess amount with other banks in a reciprocal network, thereby affording full FDIC insurance coverage to the bank's customers. The proposed rule would implement Section 202 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which amends Section 29 of Federal Deposit Insurance Act.

Under the proposed rule, a well-capitalized and well-rated (composite condition of outstanding or good) depository institution would be permitted to except non-brokered reciprocal deposits (defined in Section 202 of the EGRRCPA as "deposits received by an agent institution through a deposit placement network with the same maturity (if any) and in the same aggregate amount as covered deposits placed by the agent institution in other network member banks") up to the lesser of 20 percent of its total liabilities or $5 billion from treatment as brokered deposits (referred to as the general cap).

For institutions that are not both well-capitalized and well-rated, the proposed rule provides for the exclusion of reciprocal deposits up to the lesser of the general cap or a special cap amount calculated as the average amount of reciprocal deposits held at quarter-end during the last four quarters preceding the quarter that the institution ceased to qualify as well-capitalized or well-rated, subject to certain conditions. One potential impact of the rule is an increase in the use of reciprocal deposits given that undercapitalized banks would be permitted to accept such deposits to a limited extent.

The FDIC also proposes to make corresponding amendments to its insurance assessment regulations to ensure conformity with the statutory definition of reciprocal deposits. The FDIC estimates that the changes could cause deposit insurance assessments to increase for certain banks that have brokered deposits greater than 10% of total assets. The FDIC noted that this proposal will be followed by a proposed rulemaking that would address comprehensively the FDIC's overall framework for regulating brokered deposits in light of changes in technology, business models and product types since the rules were put in place.

Comments to the proposed rule regarding reciprocal deposits are due no later than October 26, 2018.

The full text of the FDIC proposal is available at: https://www.gpo.gov/fdsys/pkg/FR-2018-09-26/pdf/2018-20303.pdf.

US Federal Deposit Insurance Corporation Seeks to Retire Certain Financial Institution Letters

On September 10, 2018, the FDIC published a proposal (FIL-46-2018) seeking comment with respect to the retirement of certain Financial Institution Letters. FILs are letters that typically announce various types of regulations, policies, publications, and other matters of interest to those in the banking community. The retired FILs would be archived and moved to inactive status, but would still be available for reference. The FDIC issued the proposal pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996, which requires the FDIC (and other agencies) to conduct a review of their rules at least every ten years to identify outdated or unnecessary regulations. In connection with this mandate, the FDIC has identified 374 FILs issued between 1995 and 2017 regarding risk management supervision that have become outdated or

redundant. The FDIC is also currently reviewing FILs regarding other subject matters, and is exploring opportunities to update or streamline its remaining FILs generally.

Comments to the proposal are due by October 10, 2018.

The full text of the FDIC proposal, including a list of the letters to be retired, is available at: https://www.fdic.gov/news/news/financial/2018/fil18046.pdf.

US Office of the Comptroller of The Currency Proposes to Permit Certain Federal Savings Associations to Operate With National Bank Powers

On September 10, 2018, the U.S. Office of the Comptroller of the Currency published a notice of proposed rulemaking with respect to permitting federal savings associations with total consolidated assets of $20 billion or less as of December 31, 2017 ("covered savings associations"), to elect to operate with the same rights and privileges as a national bank. The proposed rule seeks to implement Section 206 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which amends the Home Owners' Loan Act, and is intended to provide business flexibility for certain federal savings associations to adapt to change without a corresponding requirement to change charters.

Under the proposed rule, a covered savings association has the same rights and privileges as a national bank that has its main office situated in the same location as the home office of the covered savings association, and is subject to the same duties, restrictions, penalties, liabilities, conditions and limitations that would apply to such a national bank. The covered savings institution, however, will retain its federal savings association charter, and will be treated as a federal savings association for governance and other purposes, including consolidation, merger, dissolution, conversion, conservatorship and receivership. Treatment as a covered savings association would generally continue even after the institution's total consolidated assets exceed $20 billion.

Comments to the proposed rule are due no later than November 19, 2018.

The full text of the proposal is available at: https://www.gpo.gov/fdsys/pkg/FR-2018-09-18/pdf/2018-19955.pdf.

European Central Bank Guide to On-Site Inspections and Internal Model Investigations

On September 21, 2018, the European Central Bank published its finalized Guide to on-site inspections and internal model investigations under the Single Supervisory Mechanism. The ECB is empowered under the SSM Regulation to conduct, with respect to Eurozone entities within its supervisory remit: (i) on-site inspections, which are in-depth investigations of risk, risk controls and governance; and (ii) internal model investigations, which involve in-depth assessments of internal models used for the calculation of own fund requirements.

The ECB has developed the Guide as a reference document for supervised entities and other legal entities for which the ECB has decided to launch an on-site inspection. It consulted on a draft of the Guide in July 2017 and has published a separate feedback statement on the consultation responses that were received. The Guide applies to ECB inspections of significant institutions, less significant institutions and other legal entities referred to in the SSM Regulation, including third parties to whom credit institutions have outsourced functions.

The Guide comprises three sections: (i) the general framework for inspections; (ii) the inspection process; and (iii) applicable principles for inspections. The Guide is not a legally binding document and does not replace the legal requirements laid down in the relevant applicable EU law.

The Guide is available at: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.osi_guide201809.en.pdf and the feedback statement is available at: https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/osi/ssm.osi_guide_feedbackstatement201809.en.pdf.

Basel Committee on Banking Supervision Provides Brief Update on Various Workstreams

On September 20, 2018, the Basel Committee on Banking Supervision published a press release summarizing the outcome of its meeting on September 19-20, 2018. The Committee committed to consider Pillar 1 and Pillar 3 measures to prevent banks adjusting their balance sheets around regulatory reporting dates to manipulate reported leverage ratios. In addition, the Committee intends to further analyze banks' exposures to crypto-assets to reach a conclusion on whether action is needed to address the risks that these assets may present.

The Basel Committee will publish the following before the end of the year:

I. an updated 2018 list of global systemically important banks, along with the high-level indicator values of all the banks that are within the G-SIB assessment exercise;

II. final revisions to the market risk framework (towards the end of the year);

III. a consultation paper (in October 2018) on whether the exposure measure should be revised to alleviate its impact on client clearing, including presenting options for revising this; and

IV. the revised Principles on Stress Testing (in October 2018).

The Basel Committee also published responses to Frequently Asked Questions on the treatment of settled-to-market derivatives under the Liquidity Coverage Ratio and Net Stable Funding Ratio.

The press release is available at: https://www.bis.org/press/p180920b.htm and the FAQs are available at: https://www.bis.org/press/p180920a.htm.

Conduct & Culture

Bank of England Launches Public Register for the UK Money Markets Code

On September 17, 2018, the Bank of England announced that its Money Markets Committee has launched a public register to display the statements of commitment from market participants that have agreed to abide by the U.K. Money Markets Code and would like their statements to be included on the register. The public register is accessible via a dedicated BoE webpage.

The Code is a voluntary industry code launched in April 2017, written by market participants. It sets out best practice expected from participants in the deposit, repo and securities lending markets and incorporates revised relevant sections of the Non-Investment Products Code, and also a revision and update of the Gilt Repo Code and Securities Borrowing and Lending Code.

The public register is available at: https://www.bankofengland.co.uk/markets/money-markets-committee-and-uk-money-markets-code/public-register and the Money Markets Code is available at: https://www.bankofengland.co.uk/-/media/boe/files/markets/money-markets-committee/uk-money-markets-code.pdf.

Consumer Protection

International Standards Body Encourages Regulatory Clampdown on OTC Leveraged Products

On September 19, 2018, the International Organization of Securities Commissions published a report on retail OTC leveraged products, alongside a statement warning retail investors of the risks of investing in illegal or fraudulent binary options. This step at international level follows the temporary prohibition of the marketing, distribution or sale of binary options and the restrictions on the marketing, distribution or sale of CFDs to retail clients introduced in the EU earlier this year, which the U.K. Financial Conduct Authority fully supported.

The report covers rolling spot forex contracts, CFDs and binary options offered and sold on a domestic and cross-border basis by intermediaries to retail investors. The report includes three toolkits providing guidance to IOSCO member jurisdictions on methods for mitigating the harm to retail investors investing in these products.

The first toolkit outlines policy measures and guidance for the regulation of the offer and sale of these products by intermediaries, including leverage limits, pricing methodologies, marketing restrictions and bans. The second toolkit provides guidance on how member jurisdictions could design investor education programs to inform retail investors about the risks of OTC leveraged products and unlicensed entities active in this area. The third toolkit concerns the activities of unlicensed entities, focusing on binary option firms. It discusses the challenges posed by these firms when they offer OTC leveraged products to retail investors and presents effective practices already used in some jurisdictions to mitigate the risks created by firms illegally or fraudulently offering these products.

The toolkits are not binding on IOSCO members. However, IOSCO encourages its members to consider how one or more of the measures could be adopted into their domestic framework to assist in protecting retail investors.

IOSCO's statement provides information about binary options and warns retail investors about the risks presented by these products. The statement also includes links to action taken by regulators across the globe to address the potential harm of binary options.

The report is available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD613.pdf, the statement on binary options is available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD614.pdf, details of the EU bans are available at: https://finreg.shearman.com/european-securities-and-markets-authority-intends and details of the FCA's statement supporting the EU actions are available at: https://finreg.shearman.com/uk-conduct-regulator-reminds-firms-of-obligations.

Derivatives

US Prudential Regulators Amend Swap Margin Rule to Reflect QFC Stay Requirements

On September 21, 2018, the Federal Reserve Board, the FDIC, the OCC, the Farm Credit Administration and the Federal Housing Finance Agency (together, the "Prudential Regulators") approved amendments to their margin requirements for uncleared swaps and security-based swaps to align with regulations of the Board, FDIC and OCC relating to stays on default remedies for certain qualified financial contracts (QFC Rules). The final amendments conform the definition of "eligible master netting agreement" under the Swap Margin Rule with the "qualifying master netting agreement" definition in the QFC Rules. Therefore, master netting agreements that comply with the limitations on default remedies in the QFC Rules are not excluded from the definition of EMNA for purposes of the Swap Margin Rules. Additionally, any legacy uncleared swaps not

subject to the Swap Margin Rule would not become subject to the Swap Margin Rule due solely to amendments to comply with the QFC Rules.

The final amendments are effective 30 days following their publication in the Federal Register.

The final amendments are available at: https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180921a.pdf and the Prudential Regulators' joint press release is available at: https://www.federalreserve.gov/newsevents/pressreleases/bcreg20180921a.htm.

Enforcement

US Agencies Issue Multiple Digital Asset-Related Enforcement Orders

On September 20, 2018, the Securities and Exchange Commission and the Financial Industry Regulatory Authority issued three digital asset-related enforcement orders, and the SEC also suspended trading in two securities that track the value of digital assets. The orders mark an uptick in digital asset enforcement from previous months.

Crypto Asset Management, LP

On September 11, 2018, the SEC alleged that hedge fund manager Crypto Asset Management (CAM) had caused its Crypto Asset Fund (CAF) to fail to register as an investment company based on its digital asset investments, marking the first time the SEC has invoked the Investment Company Act of 1940 in an enforcement proceeding against the managing member of a pooled investment vehicle that invests in digital assets.

The settlement order alleged that CAM and its sole principal Timothy Enneking raised over $3.6 million for CAF from 44 investors from August 1, 2017 through December 1, 2017, including through general solicitation and through false statements that the fund was regulated by the SEC and had filed a registration statement with the agency. Additionally, the SEC alleged that CAF operated as an unregistered investment company by engaging in an unregistered non-exempt public offering and investing more than 40 percent of the fund's assets in digital asset securities. The 1940 Act defines an investment company to include an issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of its total assets (exclusive of government securities and cash items) on an unconsolidated basis. The SEC alleged that the digital assets in which CAF invested were securities, and that CAF thus fell within the definition of an investment company.

Without admitting or denying the SEC's findings, CAM and Enneking agreed to the agency's cease-and-desist order and censure, and agreed to pay a $200,000 fine. The order also indicates that CAM made a rescission offer to the affected investors to address the fact that the securities they had purchased in CAF had been unregistered.

TokenLot LLC

Also on September 11, 2018, the SEC filed and settled charges against TokenLot LLC and its owners for acting as unregistered broker-dealers. This is the SEC's first disciplinary action charging an unregistered broker-dealer for selling digital tokens. The SEC alleged that TokenLot, Lenny Kugel and Eli L. Lewitt promoted TokenLot's website as a means of purchasing digital tokens during initial coin offerings and selling those tokens in secondary markets. Through these efforts, TokenLot received orders from more than 6,100 retail

investors and handled more than 200 digital tokens. The SEC found that because the digital tokens issued in the ICOs and traded by TokenLot, Kugel and Lewitt included securities, their activities required broker-dealer registration with the SEC. As a result, the SEC concluded that TokenLot, Kugel and Lewitt effected unregistered securities transactions as unregistered broker-dealers in violation of the Securities Exchange Act.

In response to the SEC's investigation, TokenLot voluntarily wound down its business and refunded customers for unfilled orders. In addition, TokenLot, Kugel and Lewitt agreed to pay $478,929 in disgorgement and retain an independent third party to destroy TokenLot's remaining digital assets. Kugel and Lewitt also each agreed to pay $45,000 in fines and agreed to industry and penny stock bars, along with an investment company prohibition with the right to reapply after three years.

Timothy Tilton Ayre and HempCoin

FINRA on September 11, 2018 filed a complaint charging Timothy Tilton Ayre with securities fraud and the unlawful distribution of an unregistered digital asset security called HempCoin. FINRA alleged that from January 2013 through October 2016, Ayre solicited public investment in his firm Rocky Mountain Ayre, Inc. (RMTN) by issuing and selling HempCoin and publicizing HempCoin as the "first minable coin backed by marketable securities." Ayre then allegedly repackaged HempCoin as a security backed by RMTN common stock in 2015, and then proceeded to market HempCoin as "the world's first currency to represent equity ownership" in a publicly traded company and sell the coins on the basis that each coin was equivalent to 0.10 shares of RMTN common stock. FINRA has charged Ayre with the unlawful distribution of an unregistered security as a result of his failure to register HempCoin as a security or seek an exemption. Further, FINRA alleged that Ayre defrauded investors by making materially false statements and omissions regarding the nature of RMTN's business, failing to disclose his creation and unlawful distribution of HempCoin and making false statements related to the firm's financial health.

The complaint represents an initiation of formal proceedings by FINRA. Under FINRA rules, Ayre may file a response and request a hearing before a FINRA disciplinary panel. If found to have committed the alleged violations, possible remedies include a fine, censure, suspension or bar from the securities industry, disgorgement or payment of restitution.

XBT Provider AB

On September 9, 2018, the SEC temporarily suspended trading in Bitcoin Tracker One (Ticker Symbol: CXBTF) and Ether Tracker One (Ticker Symbol: CETHF), two securities listed on the Nasdaq Stockholm exchange by XBT Provider AB, a Swedish issuer of digital asset tracking certificates. In its suspension order, the SEC cited confusion amongst market participants due to a lack of current, consistent and accurate information in regulatory filings for the securities. For example, the SEC noted that broker-dealer application materials submitted to permit the offer and sale of CXBTF and CETHF in the U.S. described the securities as "Exchange Traded Funds," while other materials described them as "Exchange Traded Notes." However, in its offering materials, XBT Provider characterized the securities as "non-equity linked certificates." Trading in the securities was suspended until September 21, 2018. The SEC in its suspension order did not specify whether any steps must be taken by XBT Provider to resume trading in CXBTF and CETHF.

The SEC / CAM Order is available at: https://www.sec.gov/litigation/admin/2018/33-10544.pdf, the SEC / Tokenlot Order is available at: https://www.sec.gov/litigation/admin/2018/33-10544.pdf, FINRA's complaint is available at: http://www.finra.org/sites/default/files/Ayre_Complaint_091118.pdf and the SEC Order suspending trading in Bitcoin Tracker One is available at: https://www.sec.gov/litigation/suspensions/2018/34-84063-o.pdf.

US Federal Financial Regulatory Agencies Reaffirm the Role of Supervisory Guidance

On September 11, 2018, the Federal Reserve Board, FDIC, National Credit Union Administration, OCC and Bureau of Consumer Financial Protection issued an interagency statement explaining the role and legal status of supervisory guidance. The statement highlights the difference between supervisory guidance on one hand, and laws and regulations on the other hand, noting that supervisory guidance, in all forms, does not have the force and effect of law, and that the agencies do not take enforcement actions based upon supervisory guidance. Instead, supervisory guidance outlines supervisory expectations or priorities, articulates general views regarding appropriate practices for a given subject area and can provide examples of practices that the agencies generally consider consistent with safety-and-soundness standards or other applicable laws and regulations.

The interagency statement also outlines ongoing steps that the regulatory agencies are taking to clarify the role of supervisory guidance, including, limiting the use of numerical thresholds or other "bright-lines" in describing expectations in supervisory guidance; not criticizing a supervised financial institution for a "violation" of supervisory guidance; seeking public comment with respect to supervisory guidance; limiting and reducing the issuance of multiple supervisory guidance documents addressing the same topic; maintaining clarity in communications to examiners and supervised financial institutions with respect to the role of supervisory guidance; and encouraging supervised financial institutions to raise and discuss any questions regarding supervisory guidance with their appropriate regulatory agency contact.

The full text of the interagency statement is available at: https://www.federalreserve.gov/supervisionreg/srletters/sr1805a1.pdf.

UK Conduct Regulator Bans Former Trader for Euribor Manipulation

On September 14, 2018, the U.K. FCA issued a Final Notice to a former employee of a major EU bank, prohibiting him from performing any function in relation to any regulated financial activity. The individual had been employed to trade interest rate derivative products referenced to benchmarks including the Euro Interbank Offered Rate.

The FCA had previously issued a Decision Notice to the former trader in April 2017 imposing a prohibition and a fine of £6.5 million, following a finding that, between March 2005 and June 2009, the former trader had been knowingly concerned in a contravention by his employer of Principle 5 of the FCA's Principles for Businesses, which requires firms to observe proper standards of market conduct.

The former trader referred the Decision Notice to the Upper Tribunal in May 2017. At the time, he was also the subject of criminal proceedings based on substantially the same matters as the FCA's investigation and proceedings were stayed in the Upper Tribunal pending the outcome of that prosecution. The former trader pleaded guilty to conspiracy to defraud in the criminal action and was sentenced to five years and four months imprisonment in July 2018. He was also ordered to pay £2.5 million by way of confiscation order. The Upper Tribunal published its decision on September 14, 2018. It directed the FCA not to impose a financial penalty and otherwise ordered that the reference be dismissed. The FCA's initial decision to impose a prohibition now stands as its final decision.

The Final Notice is available at: https://www.fca.org.uk/publication/final-notices/christian-bittar-2018.pdf, the FCA press release is available at: https://www.fca.org.uk/news/press-releases/financial-conduct-authority-bans-former-deutsche-bank-trader-christian-bittar and the Upper Tribunal decision is available at: https://assets.publishing.service.gov.uk/media/5b9bbbe0e5274a3f90114e0e/Bitter_Sept.pdf.

Final Defendant Sentenced in UK Regulator's Prosecution of £2.8 Million Investment Fraud

On September 17, 2018, the final defendant in an investment fraud case was sentenced to 11 years' imprisonment following "Operation Tidworth," the U.K. FCA's largest and one of its most complex fraud investigations to date. Five other defendants received prison sentences on September 4, 2018 for their roles in share fraud carried out through a series of boiler room companies which led to the loss of more than £2.8 million of investors' money. Many of the investors were elderly or vulnerable and lost life-changing sums, which in some cases amounted to their life savings. The six defendants in the fraud have together been sentenced to a total of 28.5 years' imprisonment. The final defendant was considered to be the instigator and main beneficiary of the fraud.

The final defendant must serve a total of 13 years in prison, having received an additional sentence of 2 years' imprisonment in a separate prosecution by the Crown Prosecution Service and the City of London Police.

The FCA press release is available at: https://www.fca.org.uk/news/press-releases/michael-nascimento-sentenced-11-years-imprisonment-fca-prosecution-investment-fraud-operation-tidworth and details of the sentences handed down on September 4, 2018 are available at: https://finreg.shearman.com/five-individuals-imprisoned-for-pound28m-uk-inves.

Financial Services

US-UK Financial Regulatory Working Group Holds Inaugural Meeting

On September 18, 2018, the U.S.-U.K. Financial Regulatory Working Group has issued a statement following its inaugural meeting held on September 12, 2018 in London. Participants discussed the outlook for financial regulatory reforms and future priorities, including possible areas for deeper regulatory cooperation to facilitate further financial services activity between U.S. and U.K. markets. Participants also discussed Brexit-related issues, including: (i) U.S.-U.K. financial regulatory issues resulting from the U.K.'s exit from the EU; and (ii) the implications of Brexit for financial stability and cross-border financial regulation, including contractual continuity and potential cliff-edge risks.

The Working Group was established in April 2018 to serve as a forum for staff from the U.S. Department of the Treasury and HM Treasury and financial regulatory authorities to exchange views on the regulatory relationship between the U.S. and the U.K. Its objectives are to further financial regulatory cooperation, improve transparency, reduce regulatory uncertainty, identify possible cross-border implementation issues, address regulatory arbitrage and work towards achieving compatibility of U.S. and U.K. laws and regulations.

The next meeting of the Working Group will be held in the first half of 2019 in Washington, D.C.

The statement is available at: https://www.gov.uk/government/publications/joint-statement-inaugural-meeting-of-us-uk-financial-regulatory-working-group/joint-statement-inaugural-meeting-of-us-uk-financial-regulatory-working-group.

FinTech

UK Parliamentary Committee Calls for Urgent Regulation of Crypto-Assets

On September 19, 2018, the U.K. House of Commons Treasury Committee published a report calling for crypto-assets to be regulated in the U.K. as a matter of urgency. The Treasury Committee considers that the current "ambiguity of the U.K. Government and regulators' position is clearly not sustainable" and is

recommending that an amendment be made to the Regulated Activities Order to bring crypto-assets within the U.K. regulatory perimeter, supervised by the FCA. The Committee does not specify in the report the activity related to crypto-assets that should go into the RAO, but recommends that it should at least include the issuance of crypto-assets through Initial Coin Offerings and the provision of crypto-exchange services. This will, according to the Committee's report, address anti-money laundering risks and consumer protection, aligning investor protections with those adopted in the U.S.

The Committee is also seeking the following actions:

I. The Committee requests the FCA to set out what its approach to market manipulation would be if crypto-exchanges did become regulated by the FCA.

II. The Committee implores the Government to prioritize implementing the recently finalized EU Fifth Anti-Money Laundering Directive into U.K. law. Among other things, 5MLD will extend the scope of "obliged entities" to include providers of exchange services between virtual and fiat currencies as well as custodian wallet providers. EU Member States must transpose 5MLD into their national laws by January 10, 2020. Existing U.K. transposition plans only envisage consultations being completed by the end of 2019. Taking into account Brexit, the Committee states that it expects the Government "to replicate the relevant provisions of [5MLD] in U.K. law as quickly as possible."

III. The Committee concurs with the BoE's assessment that crypto-assets only present a low risk to financial stability because they are not widely used as a means of payment. Nevertheless, the Committee requires the BoE and the FCA to monitor developments in the crypto-assets markets, including financial institutions' exposure to them.

The report is available at: https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/910/91002.htm and the press release is available at: https://www.parliament.uk/business/committees/committees-a-z/commons-select/treasury-committee/news-parliament-2017/digital-currencies-report-pubished-17-19/.

MiFID II

Further Amendments to Technical Standards on EU Systematic Internalisers' Quote Rules

On September 20, 2018, the European Securities and Markets Authority published an Opinion and revised draft amendments to the Regulatory Technical Standard on the equity transparency obligations of trading venues and investment firms. The RTS, known as RTS 1, is set out in Commission Delegated Regulation (EU) 2017/587, supplementing the Markets in Financial Instruments Regulation.

Under MiFIR, Systematic Internalisers must make public firm quotes in equity instruments. The quotes must: (i) be at least equivalent of 10% of the standard market size for the quoted instrument; (ii) include both a bid and offer price; and (iii) reflect the prevailing market conditions for that instrument. RTS 1 specifies the concept of "prices reflecting prevailing market conditions" as being "close in price, at the time of publication, to quotes of equivalent sizes for the same financial instrument on the most relevant market in terms of liquidity."

ESMA submitted final draft amendments to RTS 1 in March 2018, which provided that, where a financial instrument is subject to the "minimum tick size" regime, the quotes of an SI can only adequately reflect prevailing market conditions when those quotes reflect the minimum price increments ("tick sizes") quoted by EU trading venues trading the instrument.

In August 2018, the European Commission published a Communication stating that it proposed to endorse the proposed amended RTS 1 once ESMA had made certain changes to the draft text to reflect a number of concerns, including that the application of tick sizes should be limited to shares and depository receipts. ESMA acknowledges that the amendment requested by the Commission will ensure the application of tick sizes to SIs' quotes for most equity instruments in a timely fashion. ESMA has agreed to limit the application

of tick sizes to quotes of SIs to shares and depositary receipts and has sent its Opinion and a revised draft RTS 1 to the Commission for endorsement.

The Opinion and related documents are available at: https://www.esma.europa.eu/press-news/esma-news/esma-agrees-limit-application-tick-sizes-systematic-internalisers-quotes-shares and details of the Commission Communication are available at: https://finreg.shearman.com/european-commission-communication-on-proposed-ame.

Payment Services

US Federal Reserve Board Issues Final Rule Amending the Liability Provisions of Regulation CC

On September 12, 2018, the Federal Reserve Board announced a final rule amending the liability provisions of Subpart C of Regulation CC to address instances where there is a dispute between banks as to whether a check has been altered or is a forgery, and the original check is not available for inspection. The final rule creates a rebuttable presumption of alteration (as that term is used in the UCC) with respect to disputes that arise between banks regarding substitute or electronic checks. The presumption is rebuttable either by proving by a preponderance of the evidence that the substitute or electronic check is forged (i.e., derives from an original check that was issued with an unauthorized signature of the drawer) or does not contain an alteration. The presumption of alteration does not apply if a copy of the original check is available for inspection by all parties or where one bank sent the original check to the other bank, even if the check was subsequently truncated and destroyed. The final rule will take effect on January 1, 2019.

The full text of the final rule is available at https://www.gpo.gov/fdsys/pkg/FR-2018-09-17/pdf/2018-20029.pdf.

UK Conduct Regulator Consults on Implementing the Revised Payment Services Directive

On September 17, 2018, the U.K. FCA launched a consultation on its approach to implementing RTS and related Guidelines developed by the European Banking Authority to supplement provisions of the revised Payment Services Directive. The FCA's consultation focuses in particular on the RTS for strong customer authentication and common and secure open standards of communication. These RTS impose obligations on payment service providers to increase the security of customers' payments made by card and other means and also set out requirements on account servicing payment service providers (ASPSPs) relating to the third party providers of Account Information Services (AIS) and Payment Initiation Services (PIS) that were brought within the regulatory regime by PSD2.

The consultation includes proposals on new fraud reporting requirements reflecting PSD2 fraud reporting guidelines published by the EBA in July 2018. The FCA is also consulting on proposed changes to its Payment Services and E-Money Approach Document to reflect other legislative changes and clarify its expectations.

The EBA consulted between June and August 2018 on proposed Guidelines on aspects of the RTS. The FCA's proposed implementation approach is premised on the assumption that the final Guidelines will be largely as consulted on and the FCA will adjust its approach if necessary when the finalized Guidelines are published.

The RTS on strong customer authentication and common and secure open standards of communication are set out in Commission Delegated Regulation (EU) 2018/389, which will apply directly across the EU mainly from September 14, 2019. The RTS specify how third party providers (that is, AIS providers, PIS providers and payment service providers issuing card-based instruments) can connect securely with customers' banks or

other providers to provide their services. The RTS require that ASPSPs must either: (i) give third party providers access to the same interfaces used for authentication of and communication with the ASPSP's payment services users; or (ii) provide access by means of a dedicated interface.

When they provide a dedicated interface, ASPSPs are required to put in place contingency plans to address any unplanned unavailability of that interface, such as systems failure. In order to obtain exemption from this contingency requirement, an ASPSP must provide a dedicated interface that meets each of several conditions prescribed in the RTS and must provide evidence of its compliance with the conditions to its national regulator. The national regulator can then allow the exemption after consultation with the EBA. The EBA will be finalizing its Guidelines designed to clarify the conditions and the factors that national regulators should consider to determine whether an ASPSP qualifies for the exemption.

The proposals in the FCA's consultation paper will apply to PSPs, including banks, building societies, e-money issuers, payment institutions, registered AIS providers and PIS providers.

Comments on the consultation are invited by October 12, 2018. Subject to the outcome of the consultation, the FCA will accept applications from ASPSPs for exemption from the contingency obligation from January 2019. Exemption requests should be submitted by June 14, 2019 if exemption is sought by September 14, 2019. The procedure for making an exemption application is set out in an annex to the consultation paper.

The consultation paper (FCA CP 18/25) and response form are available at: https://www.fca.org.uk/publication/consultation/cp18-25.pdf and https://www.fca.org.uk/cp18-25-response-form, the Delegated Regulation (EU) 2018/389 is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0389&from=EN, details of the EBA consultation on draft Guidelines on the exemption conditions are available at: https://finreg.shearman.com/european-banking-authority-clarifies-strong-custo and details of the EBA's fraud reporting Guidelines are available at: https://finreg.shearman.com/eu-final-guidelines-on-fraud-reporting-under-the-.

Securities

UK Regulators Ask Large Banks and Insurers for LIBOR Transition Plans

On September 19, 2018, the Prudential Regulation Authority and the FCA published letters addressed to the CEOs of the largest banks and insurers supervised in the U.K. asking for confirmation of each firm's preparations for transition from LIBOR to risk-free rates. The regulators are requesting these firms to provide the following by December 14, 2018:

I. A summary of the firm's assessment of key risks relating to LIBOR discontinuation and details of actions the firm intends to take to mitigate those risks, approved by the board; and

II. The names of the Senior Manager(s) responsible for the provision of the firm's response to the letter and for implementing its transition plans.

The letter relates to the ongoing global benchmark reform effort instigated by the Financial Stability Board, in particular, the transition from LIBOR to alternative rates by the end of 2021. Firms that have not received the letter are not subject to the information request, but the regulators ask those firms to nevertheless consider their LIBOR transition plans, where relevant.

The letters are available at: https://www.bankofengland.co.uk/prudential-regulation/letter/2018/firms-preparations-for-transition-from-libor-to-risk-free-rates.

International Guidance Addresses Conflicts of Interest and Conduct Risks in Equity Capital Raisings

On September 18, 2018, IOSCO published a final report setting out Guidance to its members to address the significant potential conflicts of interest arising from the role of intermediaries during key stages of an equity raising. IOSCO consulted on a draft version of the guidance between February and April 2018.

IOSCO has identified a number of key risks. In the early, pre-offering, phase of an equity raising, conflicts of interest can arise if analysts employed by firms managing the securities offering are at risk of being under pressure to present a positive view of the issuer. During the investor education and price-formation phase, there is a risk that these "connected" analysts may produce conflicted research and conflicts can also be present during the allocation of securities. IOSCO considers that there can be both conflicts of interest and risks of misconduct where staff employed within firms that are managing an equity raising enter into personal transactions related to the capital raising. These issues can damage investor confidence and the effectiveness of the capital markets as route for issuers to raise finance.

The Guidance consists of eight separate measures that are designed to increase the range and quality of timely information available to investors, make allocations more transparent and enhance the integrity and efficiency of the process as a whole. IOSCO recognizes, however, that differing market practice, legal and regulatory frameworks in place to govern the equity capital raising process means that conflicts of interest and associated misconduct risks vary across jurisdictions. For this reason, IOSCO has built in some flexibility in the Guidance to enable national regulators to tailor their implementation in accordance with the specific risks of their jurisdiction.

The Guidance will not be binding, but IOSCO encourages its members to consider the proposals carefully in the context of their legal and regulatory frameworks. IOSCO now plans to examine whether similar issues arise in the debt capital raising process across different jurisdictions and whether any regulatory response is needed.

The Guidance is available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD612.pdf.

Upcoming Events

September 27-28, 2018: Annual ESRB conference

September 28, 2018: BoE conference on Non-Bank financial institutions and financial stability (BoE in partnership with the CEPR, the Brevan-Howard Centre and the Paul Woolley Centre)

October 3, 2018: Public hearing on the EBA's consultation on revised ITS for supervisory reporting under the CRR

October 15, 2018: SRB Conference 2018 - 10 years after the crisis: are banks now resolvable?

October 10, 2018: Public hearing on the EBA's consultation on revised ITS on supervisory reporting in line with the Liquidity Coverage Requirement under the CRR

November 28, 2018: EBA 7th Annual Research Workshop - Reaping the benefits of an integrated EU banking market

Upcoming Consultation Deadlines

September 28, 2018: FCA call for input on the PRIIPs Regulation

September 30, 2018: BoE consultation on term SONIA reference rates

October 1, 2018: Comment deadline for interim final rule regarding the treatment of certain municipal obligations as high-quality liquid assets under the liquidity coverage ratio rule

October 5, 2018: ESMA consultation on minimum information content of exempted documents under the Prospectus Regulation

October 5, 2018: ESMA consultation on draft guidelines on risk factors under the Prospectus Regulation

October 5, 2018: BoE/PRA/FCA Discussion Paper on operational resilience of firms and FMIs

October 5, 2018: FCA consultation on a new workers directory

October 5, 2018: Law Commission consultation on reform of the anti-money laundering regime for England and Wales

October 10, 2018: HMT consultation on transposition of the Bank Creditor Hierarchy Directive

October 10, 2018: Comment deadline for FDIC proposal to retire certain Financial Institution Letters

October 12, 2018: ISDA consultation on fall backs based on overnight risk-free rates for certain derivatives

October 12, 2018: FCA consultation on approach to implementing technical standards under PSD2

October 14, 2018: Regulators (globally) consultation on a Global Financial Innovation Network

October 17, 2018: Comment deadline for Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds (proposed changes to the Volcker Rule)

October 25, 2018: ECB consultation on draft Part 2 of the Guide to Assessments of Licence Applications by credit institutions

October 26, 2018: EBA consultation on revised ITS on supervisory reporting in line with the Liquidity Coverage Requirement under the CRR

October 26, 2018 Comment deadline for FDIC proposal to except a capped amount of reciprocal deposits from treatment as brokered deposits

October 27, 2018: FCA consultation on proposed changes to the rules governing P2P platforms

October 29, 2018: Comment deadline for interim final rule regarding expanded 18-month examination cycle for certain small insured depository institutions and U.S. branches and agencies of foreign banks

October 29, 2018: CFTC consultation on proposed clearing obligation exemptions for certain financial end users

November 2, 2018: FCA discussion paper on the potential introduction of a new duty of care for financial services firms

November 19, 2018: Comment deadline for OCC proposal to permit certain federal savings associations to operate with national bank powers

November 27, 2018: EBA consultation on revised ITS for supervisory reporting under the CRR

December 12, 2018: PRA consultation on revisions to supervisory reporting requirements

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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