SHEARMAN & STERLING LLP

FINANCIAL INSTITUTIONS ADVISORY & FINANCIAL REGULATORY GROUP NEWSLETTER

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Financial Regulatory Developments Focus

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

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

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

Bank Prudential Regulation & Regulatory Capital

US Federal Reserve Board Approves Application by Goldman Sachs Bank USA to Acquire Deposits

On March 21, 2016, the US Board of Governors of the Federal Reserve System approved the application by Goldman Sachs Bank USA under the Bank Merger Act to assume substantially all (approximately $17 billion) of the deposit liabilities and certain assets of GE Capital Bank, a subsidiary of General Electric Corporation, including assets GE Bank uses to manage its online deposit-taking platform. The acquisition was announced in August 2015, and the Federal Reserve Board extended processing of GS Bank's application in light of numerous public comments that challenged the transaction on various grounds, including that GS is already too big to fail. In approving the transaction, among other findings, the Federal Reserve Board concluded that the transaction would have a negligible impact on the systemic footprint of GS (which has approximately $860 billion in total assets) and would improve the stability of funding available to GS Bank by diversifying its sources of funding.

The Federal Reserve Board order is available at:
http://www.federalreserve.gov/newsevents/press/orders/orders20160321a1.pdf.

Senior Officials of US Bank Regulatory Agencies Deliver Remarks Regarding Bank Supervisory Process

On March 18, 2016, as part of the Federal Reserve Bank of New York's Conference on Bank Supervision, senior officials of several US bank regulatory agencies delivered remarks regarding the effectiveness of bank supervision and key components of the bank supervisory process. In the conference's opening remarks, NY Fed President William Dudley noted the importance of distinguishing between effective and ineffective supervision, particularly given the confidential nature of the bank supervisory process. Federal Deposit Insurance Corporation Vice Chairman Thomas Hoenig subsequently noted several critical features of successful oversight of financial institutions including: (i) subjecting commercial banks of all sizes to full-scope examinations, (ii) having regulators require that the largest banks disclose important supervisory findings to allow the public to better understand their financial condition and (iii) recognition by supervisors of their limits and emphasizing that banks hold sufficient capital to backstop management mistakes and bad luck.

President Dudley's speech is available at: https://www.newyorkfed.org/newsevents/speeches/2016/dud160318.

Vice Chairman Hoenig's speech is available at: https://www.fdic.gov/news/news/speeches/spmar1816.html.

Dodd-Frank Act Criticized at American Bankers' Association Conference

On March 15-16, 2016, at an American Bankers' Association Conference in Washington, DC, US Senate Banking Committee Chairman Richard Shelby and US House of Representatives Financial Services Committee Chairman Jeb Hensarling both raised concerns regarding the current regulatory regime and certain requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act. Among other things, Chairman Shelby addressed the costs and burdens of financial regulation under the Dodd-Frank Act, specifically criticizing the $50 billion threshold for identifying systemically important financial institutions, and noted plans to continue to push his regulatory relief bill, The Financial Regulatory Improvement Act of 2015, through the Senate. Chairman Hensarling also outlined proposed legislation that would reform the Dodd-Frank Act, including eliminating certain Dodd-Frank Act and Basel III requirements for banks that hold higher levels of capital.

Chairman Shelby's remarks are available at: http://www.banking.senate.gov/public/index.cfm/republican-press-releases?ID=42698066-A7A2-4D3D-9B57-6FAE242E05F4.

Coverage of Chairman Hensarling's remarks is available at:
http://financialservices.house.gov/news/documentsingle.aspx?DocumentID=400461.

US Federal Deposit Insurance Corporation Approves Rule to Increase Deposit Insurance Fund to Required Minimum Level

On March 15, 2016, the FDIC adopted a final rule to increase the Deposit Insurance Fund to the statutorily required minimum level of 1.35 percent. Subject to certain minor changes, the rule largely mirrors the proposed rule, which was published for comment in November.

The primary purposes of the DIF are to protect the depositors of insured banks and to resolve failed banks. The Dodd-Frank Act increased the minimum for the DIF reserve ratio, the ratio of the amount in the fund to insured deposits, from 1.15 percent to 1.35 percent and required that the ratio reach that level by September 30, 2020. The reserve ratio at the end of 2015 was 1.11 percent, with a DIF balance of $72.6 billion.

The DIF is funded mainly through quarterly assessments on insured banks. Pursuant to a 2011 FDIC rule, regular assessment rates for all banks will decrease when the reserve ratio reaches 1.15 percent, which the FDIC anticipates will occur in the first half of 2016. Banks with total assets of less than $10 billion will have substantially lower assessment rates under the 2011 rule. The final rule will impose on banks with at least $10 billion in assets a surcharge of 4.5 cents per $100 of their assessment base, after making certain adjustments. The FDIC expects the reserve ratio will likely reach 1.35 percent after approximately two years of payments of the surcharges.

The final rule will become effective on July 1. If the reserve ratio reaches 1.15 percent before that date, surcharges will begin July 1. If the reserve ratio has not reached 1.15 percent by that date, surcharges will begin the first quarter after the reserve ratio reaches 1.15 percent.

The FDIC press release is available at: https://www.fdic.gov/news/news/press/2016/pr16021.html.

The final rule is available at: https://www.fdic.gov/news/board/2016/2016-03-15_notice_dis_b_fr.pdf.

Bank Structural Reform

US Commodity Futures Trading Commission Announces Volcker Rule CEO Attestation Delivery Method

On March 15, 2016, the Commodity Futures Trading Commission's Division of Swap Dealer and Intermediary Oversight announced that certain banking entities subject to Appendix B of Part 75 of the CFTC's regulations, which implements section 619 of the Dodd-Frank Act known as the "Volcker Rule," should submit their CEO attestations through the following email address: VolckerAttestation@cftc.gov. Appendix B includes requirements that a CEO attestation be submitted to the CFTC regarding the banking entity's Volcker Rule compliance program.

The CFTC press release is available at: http://www.cftc.gov/PressRoom/PressReleases/pr7340-16.

Derivatives

EU and US Authorities Adopt Determinations on Supervision of EU and US CCPs

On March 16, 2016, the European Commission published its equivalence decision on the derivatives regulatory regimes for derivatives clearing organisations in the United States was published in the Official Journal of the European Union. The decision follows the announcement by the European Commission and the Commodity Futures Trading Commission of a common approach on the supervision of CCPs operating in the US and EU. The decision provides that the legal and supervisory arrangements of the CFTC for DCOs that are systemically important derivatives clearing organizations (SIDCOs) by the Financial Stability Oversight Council or DCOs that have opted into additional standards similar to the SIDCO regime (so-called "Subpart C DCOs") are equivalent to the EU requirements under EMIR, provided that the DCO's internal rules and procedures meet the following requirements: (i) for derivatives contracts executed on regulated markets, a minimum liquidation period of two days for initial margin is applied to clearing members' proprietary positions; (ii) for all derivative contracts, measures are in place to limit procyclicality which are equivalent

to the requirements under EMIR; and (iii) the DCO has sufficient pre-funded available resources enabling it to withstand the default of at least two clearing members to which it has the largest exposures under extreme conditions. The decision provides that these additional conditions will not apply to US agricultural commodity derivatives traded and cleared domestically within the US, in light of the nexus of these contracts with the US economy, the importance of the contracts to US agricultural providers and the low degree of systemic interconnectedness of agricultural products with the rest of the financial system. The decision does not cover derivatives which are subject to the oversight of the Securities and Exchange Commission (i.e., derivatives based on a single security (a bond or share) or loan or narrow-based index of securities).

On the same day, the CFTC adopted a substituted compliance determination for DCOs that are also EU CCPs under which an EU CCP could comply with the EU requirements on financial resources, risk management, settlement procedures and default procedures instead of the CFTC requirements. Such substituted compliance will be available to EU CCPs that are currently registered as DCOs, as well as EU CCPs seeking to become registered as DCOs. The CFTC staff has also clarified that certain CFTC requirements will not apply to non-Futures Commission Merchant clearing members (and their customers) of EU CCPs that are DCOs.

The EU equivalence decision is available at: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv:OJ.L_.2016.070.01.0032.01.ENG&_sm_au_=iVVG7Vkj0Zn2njmQ and the CFTC substituted compliance determination is available at: http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/federalregister031616.pdf.

You may wish to view our client note, "Update on Equivalence under EMIR," March 17, 2016: http://www.shearman.com/~/media/Files/NewsInsights/Publications/2016/03/Update-on-Third-Country-Equivalence-Under-EMIR-FIAFR-031716.pdf.

US Commodity Futures Trading Commission Approves Final Rule to Amend the Trade Option Exemption

On March 16, 2016, the CFTC approved a final rule that removes certain reporting and recordkeeping requirements for trade option counterparties that are neither swap dealers nor major swap participants (Non-SD/MSPs), such as commercial end-users that transact in trade options in connection with their businesses. The final rule became effective on March 21, 2016.

The final rule eliminates the Form TO annual notice reporting requirement for otherwise unreported trade options in CFTC regulation 32.3(b). Furthermore, Non-SD/MSPs will not be subject to part 45 reporting requirements in connection with their trade options. The CFTC did not impose a proposed reporting requirement that a commercial participant would need to provide notice to the CFTC of its trade options activities if such activities had a value of more than $1 billion in any calendar year.

The final rule also eliminates the swap-related recordkeeping requirements for Non-SD/MSPs in connection with their trade option activities. However, Non-SD/MSPs transacting in trade options with SDs or MSPs must obtain a legal entity identifier and provide it to their SD/MSP counterparties.

CFTC No-Action Letter 13-08, which has provided conditional relief for Non-SD/MSPs from certain swap-related reporting and recordkeeping requirements, has been withdrawn. Also, given the elimination of the Form TO reporting requirement, CFTC staff is of the view that a trade option counterparty that is a Non-SD/MSP is not required to report its otherwise unreported trade options for calendar year 2015 on Form TO.

The final rule will become effective upon publication in the Federal Register.

The CFTC press release is available at: http://www.cftc.gov/PressRoom/PressReleases/pr7343-16.

The final rule is available at: http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-06260a.pdf.

CFTC Staff Letter 16-10 is available at: http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/16-10.pdf and CFTC Staff Letter 13-08 is available at: http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/13-08.pdf.

US Commodity Futures Trading Commission Staff Provides Relief in Connection with Swap Trade Confirmations

On March 14, 2016, the CFTC's Division of Market Oversight issued a no-action letter extending the time period for relief from the requirement in CFTC Regulation 37.6 that a SEF obtain documents incorporated by reference in a trade confirmation issued by the SEF prior to issuing the confirmation. SEFs are also relieved from the requirement in CFTC Regulations 37.1000, 37.1001 and 45.2(a) to maintain such documents as records. Finally, the no-action letter states that SEFs are relieved from the requirement in CFTC Regulation 45.3(a) to report confirmation data contained in the documents incorporated by reference in a confirmation.

The letter extends the relief previously provided in CFTC Staff Letter 15-25, which expires on March 31, 2016. The letter extends relief to the earlier of: (i) 11:59 pm (Eastern Time) March 31, 2017 or (ii) the effective date of revised CFTC regulations that establish a permanent solution to the confirmation matters raised by the current regulations. The relief is subject to terms and conditions in the letter.

A SEF must continue to report all swap data that the SEF is reporting as of the time of the issuance of the letter, as required by part 45 of the CFTC's regulations, even if such data is contained in the documents that the SEF incorporates by reference in a confirmation.

The CFTC press release is available at: http://www.cftc.gov/PressRoom/PressReleases/pr7339-16.

CFTC Staff Letter 16-25 is available at: http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/16-25.pdf.

CFTC Staff Letter 15-25 is available at: http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/15-25.pdf.

Financial Crime

US Federal Financial Institution Regulatory Agencies Release Guidance to Issuing Banks on Applying Customer Identification Program Requirements to Holders of Prepaid Cards

On March 21, 2016, the FDIC, Federal Reserve Board, National Credit Union Administration, OCC and Financial Crimes Enforcement Network issued guidance for certain banks, savings associations, credit unions and US branches and agencies of foreign banks (collectively, "banks") clarifying the applicability of the customer identification program (CIP) regulations implementing Section 326 of the USA PATRIOT Act to prepaid cards.

According to the guidance, a bank's CIP should apply to the holders of certain prepaid cards issued by the institution as well as to holders of such cards purchased from third-party program managers that design, manage and operate prepaid card programs on the bank's behalf. The guidance clarifies when, under the CIP rule, the bank should obtain information in order to verify the identity of the cardholder, including obtaining the name, date of birth, address and identification number (e.g., the Taxpayer Identification Number) of the cardholder.

Since prepaid cards have become mainstream financial products, US regulators have emphasized the implementation of strong and effective controls to mitigate money laundering and other financial crime risks associated with the issuance of prepaid cards and the processing of prepaid card transactions. Some controls have already been put in place, including limits on card value and the frequency and number of transfers permitted, as well as due diligence on third parties and cardholders.

The interagency guidance is available at: http://www.occ.gov/news-issuances/bulletins/2016/bulletin-2016-10a.pdf.

OCC Bulletin 2016-10 describing the interagency guidance is available at: http://www.occ.gov/news-issuances/bulletins/2016/bulletin-2016-10.html.

Two Acquitted of Money Laundering

On March 17, 2016, James Campbell Sutherland and Jack William Flader were found not guilty of money laundering by a jury at Southwark Crown Court. The nine week trial was the last in a series of three "boiler room fraud" trials. The trial opened on January 14, 2016, following an investigation which commenced in 2007. The prosecution alleged throughout the series of trials that Mr. Sutherland, Mr. Flader, both based in Hong Kong, and others received or assisted in the transfer of proceeds of fraud from accounts held by numerous entities between 2003 and 2008. Nine convictions were obtained with regard to the others in related trials between 2013 and 2014. Mr. Sutherland and Mr. Flader's charges related to the alleged laundering of the fraudulently obtained funds associated with the earlier trials.

The Serious Fraud Office press release on the matter is available at: https://www.sfo.gov.uk/2016/03/17/two-acquitted-money-laundering/.

EU Technical Standards on Reporting of Trade Activity by Trading Venues to Regulators Published

On March 17, 2016, Commission Implementing Regulation on the implementation of technical standards regarding the timing, format and template of notifications to regulators by trading venues of financial instruments was published in the Official Journal of the European Union. In accordance with the Market Abuse Regulation, trading venues are required to notify national regulators daily with certain transaction information. The ITS sets out the required format and details of trading activity that must be provided. With regards to derivatives trading, for example, information relating to the expiry date, price multiplier, and underlying issuer must be disclosed. The full list of requirements is contained in the Annex to the ITS. It is intended that the related reporting obligations under the Markets in Financial Instruments Regulation will align with the obligations under these ITS. The ITS will apply from July 3, 2016.

The ITS is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.072.01.0001.01.ENG&toc=OJ:L:2016:072:TOC.

Former Equities Trader Pleads Guilty to Insider Dealing

On March 15, 2016, Damien Clarke pleaded guilty to two counts of insider trading at Southwark Crown Court, having previously pleaded guilty to seven counts of insider trading on July 24, 2015. Mr. Clarke is a former equities trader who, through his employment, allegedly received inside information about price sensitive events, mainly anticipated public announcements of mergers and acquisitions. Mr. Clarke admitted that he profited from this information by placing trades using various accounts, in his own name and relatives. In total, Mr. Clarke's profits amounted to at least £155,161.98. Mr. Clarke will be sentenced on June 13, 2016.

The FCA press release is available at: http://www.fca.org.uk/news/former-equities-trader-pleads-guilty-to-insider-dealing.

UK's Serious Fraud Office Closes Foreign Exchange Investigation

On March 15, 2016, the Serious Fraud Office announced that it had closed its investigation relating to allegations of fraudulent conduct in the foreign exchange market. The SFO has concluded there was insufficient evidence for a realistic prospect of conviction, based on the information and material from the Financial Conduct Authority. The SFO stated that there were reasonable grounds to suspect fraud had been committed. However, the available evidence was considered not to satisfy the evidential tests for prosecution under English law. The SFO considers that the evidential deficiency could not be remedied by extending the investigation.

The SFO press release is available at: https://www.sfo.gov.uk/2016/03/15/sfo-closes-forex-investigation/.

Financial Services

US Treasury Department's Office of Foreign Assets Control Amends Cuba Sanctions

On March 15, 2016, the US Treasury Department's Office of Foreign Assets Control and the Commerce Department's Bureau of Industry and Security announced amendments to the Cuban Assets Control Regulations and Export Administration Regulations. With respect to banking and financial services, US banking institutions will be authorized to process U-turn transactions in which Cuba or a Cuban national has an interest, as well as US dollar monetary instruments, including cash and travelers' checks, presented indirectly by Cuban financial institutions. US banking institutions will also be authorized to open and maintain bank accounts in the United States for Cuban nationals in Cuba to receive payments in the United States for authorized or exempt transactions and to remit such payments back to Cuba.

The Treasury Department press release is available at: https://www.treasury.gov/press-center/press-releases/Pages/jl0379.aspx.

FinTech

US Comptroller of the Currency Delivers Speech Regarding Innovation in Banking

On March 18, 2016, US Comptroller of the Currency Thomas J. Curry delivered remarks before the National Community Reinvestment Coalition, where he addressed how banks are adapting to financial technology changes and the Office of the Comptroller of the Currency's role in supporting responsible bank innovation. Among other things, Comptroller Curry noted that the OCC will soon publish a paper outlining its views on financial services innovation that will enable the agency to "evaluate innovative products, services, or processes that require regulatory approval and identify potential risks associated with adoption."

The Comptroller's speech is available at: http://www.occ.gov/news-issuances/speeches/2016/pub-speech-2016-29.pdf.

Payment Services

UK Legislation on Unregulated and Regulated Activities

On March 16, 2016, The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 was made. The Order amends legislation relating to the regulation of activities connected with lending. The Order extends the scope of regulated activities for certain types of activities which previously did not qualify as a regulated activity and, for the purpose of the Financial Services and Markets Act, are now deemed a regulated activity. For example, it provides amendments to the regulated activity of operating electronic systems in relation to lending. The amendment states that the activity is regulated whether or not the operation collects interest under the lending agreement, and where a person carrying on that activity, facilitating another person transferring their rights under an agreement to a third party, is a regulated activity. The Order also serves partly to implement the Mortgage Credit Directive Order. For example, the Order extends the scope of the regulated activities of arranging and advising on regulated mortgage contracts so that mortgages entered into before October 31, 2004 (which are regulated as consumer credit agreements before March 21, 2016) are included within the activities from that date. The Order came into force on March 17, 2016.

The Order is available at: http://www.legislation.gov.uk/uksi/2016/392/pdfs/uksi_20160392_en.pdf.

UK Payment Systems Regulator Consults on Account Regulations

On March 15, 2016, the Payment Systems Regulator published a consultation paper on the application of the Payment Account Regulations 2015 to alternative arrangements for switching accounts, including draft guidance on its approach to designating alternative switching schemes and monitoring of the PSR's compliance under the PAR. The EU Payment Accounts Directive was transposed into UK law through the PARs. The Payment Accounts Directive outlines the

mandatory regulatory standards for EU Member States for matters such as facilitating current account switching and ensuring access to bank accounts with basic features. Provisions in the PAR relating to the role of the PSR will come into effect on September 18, 2016. The PSR's proposed guidance explains how to apply for designation as an "alternative arrangement" for switching, how the PSR will assess applications for designation, and how the PSR will monitor and enforce compliance of alternative arrangements for switching. Comments on the proposals are required by April 12, 2016.

The PSR consultation paper is available at: https://www.psr.org.uk/sites/default/files/media/PDF/CP161-PARs-consultation-paper.pdf and the PSR draft guidance is available at: https://www.psr.org.uk/sites/default/files/media/PDF/CP161-PARs-draft-guidance.pdf.

Recovery & Resolution

Prudential Regulation Authority Proposes Amendments to Rules on Contractual Recognition of Bail-in

On March 15, 2016, the Prudential Regulation Authority published proposals to amend its rules on contractual recognition of bail-in. Under the EU Bank Recovery and Resolution Directive, EU banks and large investment firms are required to include clauses in certain contracts with non-EU counterparties by which the creditor agrees to recognise that the liability may be bailed in by the national resolution authority. In November 2015, the PRA issued a Modification by Consent which disapplies the requirement for unsecured liabilities that are not debt securities (known as "phase 2 liabilities") where compliance would be impracticable. The Modification by Consent expires on June 30, 2016. The aim of the PRA's amendment is to make permanent the Modification by Consent.

A draft PRA Supervisory Statement is included which is intended to give firms guidance on the meaning of the term "impracticable." The onus would be on firms to demonstrate that compliance with the contractual recognition requirement would be impracticable. Examples of impracticability are given by the PRA, including where a non-EU authority informs a firm that it does not permit the inclusion of recognition language or that their local laws would not permit it, where contracts are governed by international protocols which a firm has no power to amend or for liabilities used for trade finance under standard international documentation. It is thought, for example, that contracts with non-EU financial infrastructure providers are now excluded from a requirement for bail-in language under this guidance.

In addition, the PRA is proposing other amendments to its rules to take into account the European Banking Authority's final draft Regulatory Technical Standards on contractual recognition of bail-in, which the PRA anticipates will soon be adopted by the European Commission. The amendments to the PRA rules are: (i) the addition of a requirement to include recognition language into contracts where liabilities are not fully secured or are not collateralized on an ongoing basis; (ii) the addition of a requirement to include recognition language in contracts where liabilities are created before the date of application of the contractual recognition requirement if the agreement is materially amended after June 30, 2016; and (iii) the replacement of the reference to liabilities "arising" after a certain date to one of liabilities "created" after that date which ensures further consistency with the EBA's RTS.

Responses to the consultation are due by May 16, 2016. The PRA intends to amend its rules, effective July 1, 2016.

The PRA consultation paper is available at: http://www.bankofengland.co.uk/pra/Documents/publications/cp/2016/cp816.pdf and the modification by consent is available at: http://www.bankofengland.co.uk/pra/Documents/authorisations/waiverscrr/modbyconbailin.pdf.

You may wish to view our client note, "BRRD: Contractual Recognition of Bail-in and Resolution Stays," February 26, 2016: http://www.shearman.com/~/media/Files/NewsInsights/Publications/2016/02/BRRD-Contractual-Recognition-of-Bailin-and-Resolution-Stays-FIAFR-022216.pdf.

European Commission Adopts Regulation on Classes of Arrangements to be Protected in a Partial Property Transfer

On March 18, 2016, the European Commission adopted a Delegated Regulation on the classes of arrangements to be protected in a partial property transfer or where a contract is forcibly modified by a resolution authority. The EU Bank Recovery and Resolution Directive provides for certain types of arrangements to be protected during the partial transfer of assets, rights and liabilities of a bank under resolution as well as when a resolution authority requires a contract to which the bank is a party to be modified. The objective is to prevent assets, rights and liabilities that are linked to each other from being split. The Delegated Regulation sets out in detail the conditions that security, set-off, netting and structured finance arrangements (including securitizations and investments used for hedging) must meet to benefit from the protection. The Delegated Regulation reminds creditors that they will need to review and modify the terms of their credit exposures to EU banks and investment firms so as to ensure that they maximize their rights to determine a net exposure to that entity and avoid their credit exposure increasing if assets and liabilities are not transferred together. The Delegated Regulation must still be approved by the European Parliament and the Council of the European Union. When it enters into force, it will apply directly in all member states across the EU.

The Delegated Regulation is available at: https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-1372-EN-F1-1.PDF.

Financial Stability Board Reports on Progress on Implementation of Bank Resolution Regimes

On March 18, 2016, the Financial Stability Board published its second Thematic Review on Resolution Regimes. The report considers the range and nature of resolution powers in FSB member jurisdiction for resolution authorities in the banking sector. The FSB has found that: (i) not all jurisdictions have implemented a bank resolution regime with a comprehensive set of powers which aligns with the FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions and that those jurisdictions that do are primarily the home jurisdictions of global systemically important banks; (ii) the powers that are most often not included in regimes are those relating to bail-in, the imposition of temporary stays on the exercise of early termination rights and the power to ensure continuity of essential services during a bank resolution; and (iii) more progress has been made in implementing processes for recovery planning than for resolution planning and resolvability assessments. The FSB is recommending that the identified gaps in powers are addressed. FSB member countries must report to the FSB by December 2016 on the actions that they have taken or intend to take to address the issues for their bank resolution regime.

The FSB's report is available at: http://www.fsb.org/wp-content/uploads/Second-peer-review-report-on-resolution-regimes.pdf.

People

US Office of the Comptroller of the Currency Announces New Senior Executives

On March 17, 2016, Comptroller of the Currency Thomas J. Curry announced the appointment of Grace Dailey as Senior Deputy Comptroller for Bank Supervision Policy and Chief National Bank Examiner. Comptroller Curry also announced that Grovetta Gardineer will fill the newly created position of Senior Deputy Comptroller for Compliance and Community Affairs. Ms. Dailey will succeed Jennifer Kelly, who is retiring at the end of April after 37 years of service to the OCC. Ms. Gardineer assumes her new title and responsibilities immediately.

The OCC press release is available at: http://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-28.html.

Thomas Baxter to Retire from the New York Fed

On March 17, 2016, Thomas C. Baxter, general counsel and executive vice president of the Federal Reserve Bank of New York, announced his decision to retire from the New York Fed in September, 2016, after 36 years of service. Mr. Baxter also serves on the New York Fed's Management Committee and as deputy general counsel for the Federal Open

Market Committee. Mr. Baxter will step down in June, but will continue to advise the New York Fed president and assist in the legal group's transition until September. The New York Fed will immediately begin the search for Mr. Baxter's successor.

The New York Fed press release is available at: https://www.newyorkfed.org/newsevents/news/aboutthefed/2016/oa160317.

Upcoming Events

March 31, 2016: ECB public hearing on proposed guide to recognition of Institutional Protection Schemes.

April 7, 2016: US Senate Committee on Banking, Housing and Urban Affairs hearing entitled "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress."

April 8, 2016, Financial Conduct Authority roundtable event, Asset management: How does the regulatory framework affect competition? (registration closes: April 1, 2016)

April 14, 2016: US Senate Committee on Banking, Housing and Urban Affairs hearing entitled "Examining Current Trends and Changes in the Fixed-Income Markets."

April 15, 2016: European Banking Authority, public hearing on its draft report, Leverage Ratio (registration closes: March 25, 2016).

April 29, 2016: First Single Resolution Board Conference: Charting the Course – Making Bank Resolution Work.

Upcoming Consultation Deadlines

March 25, 2016: European Commission Consultation on Long Term and Sustainable Investment.

March 30, 2016: EBA Consultation on Draft ITS on Supervisory Report of Institutions.

March 31, 2016: ESMA Consultation on Proposed Guidelines under MAR.

March 31, 2016: New York State Department of Financial Services Proposed Transaction Monitoring and Filtering Program.

April 5, 2016: Federal Reserve Board Notice of Proposed Rulemaking to Collect Financial Information from US Intermediate Holding Companies of Foreign Banking Organizations.

April 15, 2016: ECB consultation on Institutional Protection Schemes.

April 21, 2016: PSR Report into Banks and UK Payment Infrastructure.

May 3, 2016: FCA Consultation on Proposed Changes to Payment Accounts Regulation.

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

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

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:

Contacts

BARNEY REYNOLDS
T: +44 20 7655 5528
barney.reynolds@shearman.com
London

REENA AGRAWAL SAHNI
T: +1 212 848 7324
reena.sahni@shearman.com
New York

RUSSELL D. SACKS
T: +1 212 848 7585
rsacks@shearman.com
New York

THOMAS DONEGAN
T: +44 20 7655 5566
thomas.donegan@shearman.com
London

DONNA M. PARISI
T: +1 212 848 7367
dparisi@shearman.com
New York

NATHAN J. GREENE
T: +1 212 848 4668
ngreene@shearman.com
New York

GEOFFREY B. GOLDMAN
T: +1 212 848 4867
geoffrey.goldman@shearman.com
New York

JOHN ADAMS
T: +44 20 7655 5740
john.adams@shearman.com
London

CHRISTINA BROCH
T: +1 202 508 8028
christina.broch@shearman.com
Washington, DC

UXSHELY CHOTAI
T: +44 20 7655 5569
uxshely.chotai@shearman.com
London

MAK JUDGE
T: +65 6230 8901
mak.judge@shearman.com
Singapore

JENNIFER D. MORTON
T: +1 212 848 5187
jennifer.morton@shearman.com
New York

KOLJA STEHL
T: +49 69 9711 1623
T: +44.20.7655.5864
kolja.stehl@shearman.com
Frankfurt / London

TIMOTHY J. BYRNE
T: +1 212 848 7476
tim.byrne@shearman.com
New York

TOBIA CROFF
T: +39 02 0064 1509
tobia.croff@shearman.com
Milan

HERVÉ LETRÉGUILLY
T: +33 1 53 89 71 30
hletreguilly@shearman.com
Paris

BILL MURDIE
T: +44 20 7655 5149
bill.murdie@shearman.com
London

ELLERINA TEO
T: +44 20 7655 5070
ellerina.teo@shearman.com
London

JAMES CAMPBELL
T: +44 20 7655 5570
james.campbell@shearman.com
London

ANNA DOYLE
T: +44 20 7655 5978
anna.doyle@shearman.com
London

OLIVER LINCH
T: +44 20 7655 5715
oliver.linch@shearman.com
London

BRADLEY K. SABEL
T: +1 212 848 8410
bsabel@shearman.com
New York

AYSURIA CHANG
T: +44 20 7655 5792
aysuria.chang@shearman.com
London

SYLVIA FAVRETTO
T: +1 202 508 8176
sylvia.favretto@shearman.com
Washington, DC

BEN MCMURDO
T: +44 207 655 5906
ben.mcmurdo@shearman.com
London

JENNIFER SCOTT
T: +1 212 848 4573
jennifer.scott@shearman.com
New York