

Financial Regulatory Developments Focus



In this week's 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.

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Bank Prudential Regulation & Regulatory Capital

US Board of Governors of the Federal Reserve System Proposes Rule to Treat US Municipal Securities as Level 2B High-Quality Liquid Assets under the Liquidity Coverage Ratio

On May 21, 2015, the US Board of Governors of the Federal Reserve System issued a proposal adding certain general obligation state and municipal bonds to the range of assets a banking organization may use to satisfy the Liquidity Coverage Ratio requirement. Under the LCR requirement adopted by the federal banking agencies in September 2014, large banking organizations are required to hold High-Quality Liquid Assets that can be easily and quickly converted into cash within 30 days during a period of financial stress. The proposed rule would allow investment grade, general obligation US state and municipal bonds to be counted as HQLA up to certain levels if they meet the same liquidity criteria that currently apply to corporate debt securities. The limits on the amount of a state or municipality's bonds that could qualify are based on the specific liquidity characteristics of the bonds. The proposed rule would apply only to entities subject to the LCR and supervised by the Federal Reserve Board. The deadline for comments on the proposed rule is July 24, 2015.

The proposed rule is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/20150521a.htm>.

US Financial Stability Oversight Council Releases Annual Report

On May 26, 2015, the US Financial Stability Oversight Council unanimously approved and published its 2015 annual report. The report discusses a variety of issues, including significant financial market and regulatory developments, potential emerging threats to the financial stability of the US, and recommendations on methods to mitigate such threats. The findings in the FSOC report emphasize, among other things, the need for the continuing enhancement of cyber security for all market participants, the ongoing investigation into whether existing rules and standards are sufficiently robust to mitigate the potential risk that central counterparties could transmit credit and liquidity problems among financial institutions and markets during periods of market stress, and the efforts made to reduce gaps that remain in the scope and quality of data sharing among regulators.

The 2015 FSOC annual report and press release are available at: <http://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/2015%20FSOC%20Annual%20Report.pdf>; and <http://www.treasury.gov/press-center/press-releases/Pages/jl10055.aspx>.

US Federal Bank Regulatory Agencies Seek Further Comment on Interagency Effort to Reduce Regulatory Burden

On May 29, 2015, the US Office of the Comptroller of the Currency, the US Federal Deposit Insurance Corporation, and the Federal Reserve Board (collectively, the "federal bank regulatory agencies") approved a notice requesting comment on a third set of regulatory categories as part of their review to identify outdated or unnecessary regulations applied to insured depository institutions. The Economic Growth and Regulatory Paperwork Reduction Act of 1996 requires federal bank regulatory agencies to review their regulations at least once every 10 years and to categorize and publish the regulations for comment. Consistent with the EGRPRA, the federal bank regulatory agencies have grouped regulations applicable to insured depository institutions into 12 regulatory categories: (i) Applications and Reporting; (ii) Banking Operations; (iii) Capital; (iv) Community Reinvestment Act; (v) Consumer Protection; (vi) Directors, Officers and Employees; (vii) International Operations; (viii) Money Laundering; (ix) Powers and Activities; (x) Rules of Procedure; (xi) Safety and Soundness; and (xii) Securities. The latest notice seeks comment on regulations in the following three categories: (i) Consumer Protection; (ii) Directors, Officers and Employees; and (iii) Money Laundering. Comments will be accepted within 90 days after publication in the Federal Register. Although the current notice seeks comment on the three specifically enumerated categories above, comments are accepted on any of the established categories of regulation

as well as on all rules that have been finalized before the publication of the last EGRPRA notice which is expected by year-end. The European Commission also recently launched its Better Regulation Agenda, which among other things, aims to improve the review of existing EU laws.

The Federal Register Notice is available at: <https://www.fdic.gov/news/news/press/2015/pr15044a.pdf>.

For more information, the EGRPRA website is available at: <http://egrpra.ffiec.gov/>.

Final EU Guidelines on the Management of Interest Rate Risk Arising from Non-Trading Activities

On May 22, 2015, the European Banking Authority published a final report on guidelines on the management of interest rate risk arising from non-trading activities also known as interest rate risk in the banking book or IRRBB. The report includes the final guidelines which apply from January 1, 2016, and are addressed to national regulators, relevant credit institutions and investment firms. The final guidelines update and repeal the guidelines published on October 3, 2006 by the Committee of European Banking Supervisors. The guidelines set out the expectations for the identification and mitigation of IRRBB risks by firms. The level of application of the guidelines should be consistent with the level of application of the supervisory review and evaluation process.

The report is available at: <http://www.eba.europa.eu/documents/10180/1084098/EBA-GL-2015-08+GL+on+the+management+of+interest+rate+risk+.pdf>.

European Banking Authority Publishes Report on Additional Tier 1 Capital Instruments

On May 29, 2015, the EBA published a final report on the monitoring of Additional Tier 1 capital instruments issued by EU institutions. Under the EU Capital Requirements Regulation, the EBA must monitor the quality of own funds instruments issued by EU institutions. The report presents the EBA's recent monitoring results and updates the EBA's earlier report on the topic, published on May 4, 2015. The EBA has examined 15 AT1 issuances made between August 2013 and November 2014, five of which were made under a conversion mechanism and 10 under a temporary write-down mechanism, for a total amount of €21.4 billion. The report states that certain provisions or wording of existing AT1 instruments should be avoided or revised so that uncertainty and complexity is minimized. Wording used should be consistent with that in the CRR, for example, "non-objection" cannot be used as a substitute for "supervisory permission," a term used in the CRR. Also, certain issuances include partial regulatory calls. This means that only a portion of the instruments may be called by an institution if the corresponding part of the issuance is, due to a regulatory change, no longer recognized in Tier 1 capital. The report states that only regulatory calls for the full amount of instruments are acceptable, irrespective of whether a regulatory changes triggers full or partial derecognition from AT1 capital. The EBA intends to continue monitoring certain AT1 issuances, expects that future issuances will use some level of standardization, and advises that terms and conditions should not be unjustifiably complex. The EBA will also develop standardized terms and conditions for AT1 issuances. These would be non-compulsory for institutions, but would help to ensure compliance with regulatory provisions.

The report is available at: <http://www.eba.europa.eu/-/eba-updates-its-monitoring-of-additional-tier-1-capital-instruments>.

Compensation

UK Financial Conduct Authority Publishes Letter to Certain Firms on the Application of Malus

On May 21, 2015, the Financial Conduct Authority published a letter from its Director of Supervision, Clive Adamson, to the Remuneration Committee Chair of banks, building societies and investment firms with total assets exceeding £50 billion. The letter highlights the FCA's expectations on the application of malus (bonus clawback) ahead of the

annual review of remuneration policies and practices by the FCA and the Prudential Regulation Authority. Following the first annual review, the FCA published guidance to share best practices on the application of malus to variable remuneration and ex-ante risk adjustments.

The letter is available at: <http://www.fca.org.uk/static/documents/letter-to-remco-chairs-setting-out-malus%20expectations.pdf>.

Corporate Governance

UK Prudential Regulation Authority Consults on Board Responsibilities

On May 21, 2015, the PRA published a consultation paper which includes a draft supervisory statement on the PRA's expectations for board governance. The purpose of the supervisory statement would be to identify those aspects of board governance to which the PRA attaches particular importance and on which the PRA is likely to focus during the course of supervision. The draft statement confirms the PRA's view that the accountability of Senior Managers under the new Senior Manager Regime would be additional and complementary to the collective responsibility of the board members.

The proposed supervisory statement would apply to all PRA-regulated firms—banks, insurance firms, certain large investment firms and credit unions. However, the PRA recognizes that different governance models apply depending on the nature and size of the firm and that the degree of supervisory attention may vary from firm to firm depending on the risk profile of the firm and the potential impact of failure of a firm. The PRA's judgments on the adequacy of governance arrangements may also be influenced by a firm's recovery and resolution strategy, including (i) the extent to which the PRA is satisfied that the board of a material subsidiary can demonstrate that it is capable of independent action; (ii) culture; (iii) management incentives and business goals of the firm; and (iv) the extent to which those may differ from the PRA's statutory objectives.

The draft supervisory statement covers: setting strategy, culture, risk appetite and risk management, board composition, the respective roles of executive and non-executive directors, knowledge and experience of non-executive directors, board time and resources, management information and transparency, succession planning, remuneration, subsidiary boards and board committees. Responses to the proposed supervisory statement are due by September 14, 2015. There is no indication of when the PRA expects to publish the final supervisory statement.

The consultation paper is available at:

<http://www.bankofengland.co.uk/pr/Document/publications/cp/2015/cp1815.pdf>.

UK Prudential Regulation Authority Publishes Policy Statement on Ring Fencing Rules

On May 27, 2015, the PRA published a policy statement on ring-fencing rules concerning legal structure, governance and continuity of services and facilities. The policy statement applies to banks that are required to ring-fence their core activities, banking groups with core deposits exceeding £25 billion and financial and other institutions who deal with ring-fenced bodies. The document sets out the new rules and the new "Ring-Fenced Bodies" Part to the PRA Rulebook, all in near-final versions. A second consultation paper on ring-fencing will be published later in 2015. Final versions of all the rules and supervisory statements relating to ring-fencing will be published in the first half of 2016.

The policy statement is available at:

<http://www.bankofengland.co.uk/pr/Document/publications/ps/2015/ps1015.pdf>.

Derivatives

European Commission Launches Consultation on the Review of the European Market Infrastructure Regulation

On May 21, 2015, the European Commission published a consultation document on the review of the European Market Infrastructure Regulation. Under EMIR, the Commission must submit a report, together with any relevant legislative proposals, by August 17, 2015 to the European Parliament and the European Council, both of which will assess: (i) the potential need for measures to facilitate access by CCPs to central bank liquidity facilities; (ii) the systemic importance of transactions of non-financial counterparties in OTC derivatives and the impact of EMIR on such firms; (iii) the supervisory framework for CCPs; (iv) the efficiency of margining requirements to limit procyclicality and the need to define additional intervention capacity in this area; and (v) the development of CCPs' policies on collateral margining and their adaptation to the specific activities and risk profiles of their users. The Commission intends to focus only on those aspects of EMIR that have already been implemented, leaving out, for example, the obligation to exchange collateral for non-cleared derivatives. The report will also take into account other issues identified in the implementation of EMIR as well as reports submitted by the European Securities and Markets Authority to the Commission on, for example, the application of the clearing obligation and the application of the segregation requirements. Feedback on the consultation is due by August 13, 2015.

The consultation paper is available at: http://ec.europa.eu/finance/consultations/2015/emir-revision/docs/consultation-document_en.pdf.

European Securities and Markets Authority Publishes Opinion on the Composition of CCP Colleges

On May 21, 2015, ESMA published an opinion, dated May 7, 2015, on the composition of CCP colleges under EMIR following the establishment of the Single Supervisory Mechanism and the European Central Bank assuming direct responsibility for prudential supervision of large banks within the SSM. ESMA's opinion clarifies which authorities qualify as a college member as well as the voting rights that the ECB will hold as a college member.

ESMA's opinion is available at: <http://www.esma.europa.eu/news/ESMA-published-its-opinion-composition-CCP-Colleges?t=326&o=home>.

Enforcement

US Financial Regulators Impose Fines on Six Major Banking Organizations for Practices in the Foreign Exchange Markets

The Federal Reserve Board has announced the imposition of fines against six major banking organizations (UBS AG, Barclays Bank PLC, Citigroup Inc., JPMorgan Chase & Co., Royal Bank of Scotland PLC and Bank of America Corporation) for unsafe and unsound practices in the foreign exchange markets. The Federal Reserve Board found that as a result of deficient policies and procedures governing the banks' internal controls and oversight over foreign exchange practices, the organizations failed to detect and address improper actions by their traders. Such actions included the disclosure in electronic chatrooms of confidential customer information to traders at other organizations as well as illegal agreements among traders to manipulate benchmark currency prices. Among other things, the cease and desist order issued by the Federal Reserve Board requires the firms to improve their policies and procedures for oversight and controls over activities in the foreign exchange markets, including the wholesale foreign exchange and similar types of markets.

The Federal Reserve Board action is taken concurrently with the US Department of Justice's criminal charges against five of the same organizations (excluding Bank of America Corporation) relating to misconduct in the foreign exchange

markets. In addition, the Connecticut Department of Banking has joined the cease and desist provisions of the Federal Reserve Board's action against UBS, and the New York Department of Financial Services has taken a separate action against Barclays and its New York branch based on allegations of similar foreign exchange-related misconduct.

The Federal Reserve Board's press release is available at:

<http://www.federalreserve.gov/newsevents/press/enforcement/20150520a.htm>.

The Federal Reserve Board's order against UBS AG is available at:

<http://www.federalreserve.gov/newsevents/press/enforcement/enf20150520a6.pdf>.

The Federal Reserve Board's order against Barclays Bank plc is available at:

<http://www.federalreserve.gov/newsevents/press/enforcement/enf20150520a3.pdf>.

The Federal Reserve Board's order against Citigroup Inc. is available at:

<http://www.federalreserve.gov/newsevents/press/enforcement/enf20150520a5.pdf>.

The Federal Reserve Board's order against JPMorgan Chase & Co. is available at:

<http://www.federalreserve.gov/newsevents/press/enforcement/enf20150520a2.pdf>.

The Federal Reserve Board's order against Royal Bank of Scotland plc is available at:

<http://www.federalreserve.gov/newsevents/press/enforcement/enf20150520a4.pdf>.

The Federal Reserve Board's order against Bank of America Corporation is available at:

<http://www.federalreserve.gov/newsevents/press/enforcement/enf20150520a1.pdf>.

US Securities and Exchange Commission Charges Deutsche Bank with Misstating Financial Reports during Financial Crisis

On May 26, 2015, the US Securities and Exchange Commission announced a settlement with Deutsche Bank AG in connection with the filing by Deutsche Bank of misstated financial reports during the financial crisis that failed to take into account a material risk for potential losses estimated to be in the billions of dollars. The investigation found that Deutsche Bank overvalued a derivatives portfolio consisting of Leveraged Super Senior trades through which the bank purchased protection against credit default losses. Because these positions were leveraged, the collateral posted for such positions by the sellers was only a fraction of the total in purchased protection. This leverage created a "gap risk" that the market value of Deutsche Bank's protection could at some point exceed the available collateral, and the sellers could decide to unwind the trade rather than post additional collateral in that scenario. Thus, Deutsche Bank was not protected for the full market value of its credit protection. In connection with the settlement, and in addition to the SEC cease and desist order, Deutsche Bank agreed to pay a \$55 million penalty.

The SEC order and press release are available at: <http://www.sec.gov/news/pressrelease/2015-99.html>; and <http://www.sec.gov/litigation/admin/2015/34-75040.pdf>.

UK Financial Conduct Authority Fines Barclays for FX Failings

On May 20, 2015, the FCA imposed a fine of £284.4 million on Barclays Bank PLC for failing to have adequate systems and controls in place over its FX business in London. The FCA considered that the failings were particularly serious because of the potential impact on the systematically important spot FX market. The failure by the bank to have the necessary systems and controls in place led its traders to engage in misconduct such as inappropriate sharing of information of clients' activities, attempts to manipulate spot FX currency rates and colluding with traders at other firms.

The FCA's final notice is available at: <https://www.fca.org.uk/news/press-releases/fca-fines-barclays-for-forex-failings>.

Financial Services

European Commission Adopts Better Regulation Agenda

On May 19, 2015, the European Commission launched its Better Regulation Agenda. Through this package, the Commission aims to: (i) enhance transparency in the EU decision-making process by introducing a new web portal where initiatives can be tracked and by providing more opportunities for stakeholders to comment throughout the policy lifecycle, including allowing for feedback after the Commission has adopted a legislative proposal or, for secondary legislation, before adoption by the Commission or Member States; (ii) improve the quality of new laws through better impact assessments of draft legislation and amendments by: (a) transforming the current Commission Impact Assessment Board into an independent Regulatory Scrutiny Board with an expanded role; and (b) ensuring that impact assessments are carried out throughout the legislative process; and (iii) improve the review of existing EU laws by amending the Regulatory Fitness and Performance Programme (known as REFIT) so that it is more targeted, looks at the most serious sources of inefficiency and quantifies costs and benefits whenever possible. The European Commission also announced that it will enter into negotiations with the European Parliament and Council on a proposed new Interinstitutional Agreement on Better Law-making, endeavoring to reach an agreement by the end of 2015. The US federal bank regulatory agencies are also currently reviewing potential outdated or unnecessary regulations.

The Better Regulation documents are available at: http://ec.europa.eu/smart-regulation/better-regulation/key_docs_en.htm#_br.

UK Financial Conduct Authority Launches Market Study into Competition in Investment and Corporate Banking

On May 22, 2015, the FCA published the terms of reference for its upcoming market study into competition in investment and corporate banking. The need for the market study emerged during the FCA's review of competition into the wholesale sector, the feedback statement for which was published in February this year. The aim of the market study is to assess whether competition for investment banking and corporate banking services is functioning well, focusing on primary market and related activities provided in the UK. Primary market activities cover equity capital markets, debt capital markets, mergers & acquisitions and acquisition financing. Related activities, such as corporate lending, corporate broking and advice, will be considered to the extent that they affect competition for primary market activities. The market study will concentrate on: (i) choice of banks and advisers, including the competitive landscape, clients' purchasing behavior and entry and expansion within the sector; (ii) limited transparency, including the adequacy of information available to clients, transparency of the allocation process and the impact of established practices, processes or regulation on transparency in the IPO process; and (iii) bundling and cross-subsidization of investment and corporate and banking services, including whether there are any resulting adverse effects on competition and clients. The outcome of the market study may lead the FCA to adopt measures to promote effective competition such as making rules, publishing guidance or proposing further industry self-regulation. However, the FCA will be taking into account related initiatives such as the Fair and Effective Markets Review, the implementation of MiFID II and the Capital Markets Union, and may decide that no further action is required if any concerns arising from the market study are likely to be satisfied by upcoming legislative measures or otherwise. The FCA will be accepting comments on the terms of reference until June 22, 2015, although the regulator is not formally consulting on the terms. The FCA intends to publish an interim report, including any proposed remedies that may be necessary, by the end of the year and a final report in spring 2016.

The terms of reference are available at: <http://www.fca.org.uk/static/documents/market-studies/ms15-1-1.pdf>.

Bank of England Publishes Guidance on Traded Risk Methodology for Stress Test of UK Banking System together with Traded Risk and Structured Finance Scenario

On May 26, 2015, the Bank of England published a report on stress testing the UK banking system, which includes guidance on the traded risk methodology for participating banks and building societies. The document sets out the approach that banks are expected to take in the execution of the stress test of the UK banking system relating to trading positions. The guidance is designed to assist firms to carry out their own analysis for the stress test. The BoE also published a traded risk and structured finance scenario. This is a “tail risk” scenario, designed to assess the resilience of banks to deterioration in global economic conditions.

The report and scenario are available at:

<http://www.bankofengland.co.uk/financialstability/Documents/stresstesting/2015/tradedriskguidance.pdf>; and
<http://www.bankofengland.co.uk/financialstability/Documents/stresstesting/2015/tradedrisk2015.xlsx>.

Funds

Regulation on European Long-Term Investment Funds

On May 19, 2015, the Regulation on European long-term investment funds was published in the Official Journal of the European Union. The Regulation sets out harmonized rules for the authorization, investment policies and operating conditions of EU alternative investment funds, or parts thereof, that are marketed in the European Union as European long-term investment funds. The Regulation will apply in all EU Member States from December 9, 2015 and Member States are not able to add additional requirements for areas covered by the Regulation.

The Regulation is available at:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_123_R_0010&from=EN.

European Securities and Markets Authority Calls for Amendment of UCITS Directive to Eliminate Conflict with European Market Infrastructure Regulation

On May 22, 2015, ESMA published its opinion on the impact of EMIR on requirements under the Undertakings for Collective Investment in Transferable Securities Directive for OTC derivative transactions that are centrally cleared. ESMA recommends that the provisions on the counterparty risk limits for OTC derivatives in the UCITS Directive should be amended to take into account the clearing obligation of certain OTC derivatives under EMIR. ESMA’s opinion is that the UCITS Directive should not differentiate between OTC derivatives and exchange traded derivatives. The distinction should rather be between cleared and uncleared derivative transactions which would allow a UCITS to treat ETDs and cleared derivatives transactions with similar counterparty risk characteristics in the same way.

ESMA’s opinion is available at: <http://www.esma.europa.eu/news/Press-Release-ESMA-calls-modification-UCITS-Directive?t=326&o=home>.

Recovery & Resolution

European Banking Authority Publishes Final Guidelines on Implementation of Resolution Tools

On May 20, 2015, the EBA published three sets of final guidelines on the implementation of the resolution tools under the Bank Recovery and Resolution Directive. The final guidelines, which will apply to national resolution authorities from August 1, 2015, are: (i) guidelines on the determination of when the liquidation of assets or liabilities under normal insolvency proceedings could have an adverse effect on one or more financial markets; (ii) guidelines on factual circumstances amounting to a material threat to financial stability and on the elements related to the effectiveness of the

sale of business tool; and (iii) guidelines on the minimum list of services or facilities that are necessary to enable a recipient to operate a business transferred to it under the BRRD.

The final guidelines are available at: <http://www.eba.europa.eu/-/eba-issues-guidance-on-the-implementation-of-resolution-tools>.

Bank of England Consults on Proposed Approach to Removing Impediments to Resolvability

On May 22, 2015, the BoE launched a consultation on its proposed approach for exercising its power to direct firms to address impediments to resolvability under the Banking Act 2009, including a proposed Statement of Policy. The Banking Act 2009 implements the BRRD. The Bank of England, in preparing the resolution plan for a firm, must assess the resolvability of a firm. If any substantive impediments are identified during that assessment or otherwise, the Bank has the power to require the firm to remove any such obstacle, including requiring the amendment of a group financial support agreement, the disposal of certain assets or a change to its legal or operational structure. The proposed Statement of Policy also includes a list of possible scenarios in which the Bank might consider using its power of direction, including: (i) the issuance of debt instruments at parent company level to allow for loss absorption and recapitalization of group entities; (ii) to ensure continuity of services in resolution such as operational services, trading agreements and access to payment services and financial market infrastructures; and (iii) for systems to be put in place to support rapid and effective valuation. The consultation is open until August 22, 2015. The Bank of England intends to issue later this year a separate statement on its power to direct firms to maintain a minimum requirement for own funds and eligible liabilities, known as MREL.

The consultation paper is available at:

http://www.bankofengland.co.uk/financialstability/Documents/role/risk_reduction/srr/cp/resolutiondirectinstitutions.pdf.

Prudential Regulation Authority Publishes Revised Rules for Depositor and Dormant Account Protection

On May 20, 2015, the PRA published a Policy Statement on depositor and dormant account protection which sets out the final rules that aim to reduce the adverse effects that the failure of a firm may have on the stability of the UK financial system as well as improve depositor confidence. The Policy Statement includes the amended rules for the Depositor Protection and Dormant Account Scheme rules in the PRA Rulebook. An updated Supervisory Statement on the PRA's expectations of firms in connection to the amended rules was also published on the same day. The amended rules include a definition of public authority, extend deposit protection to deposits held by local authorities with an annual budget of up to €500,000, add a requirement for firms to inform depositors of deposits that are no longer covered by a deposit guarantee scheme from July 3, 2015 and a new requirement for deposit-takers to provide the Financial Services Compensation Scheme with information held on dormant accounts that have been transferred to a dormant account fund operator.

The PRA's Policy Statement is available at:

<http://www.bankofengland.co.uk/pradocuments/publications/ps/2015/ps915.pdf> and the updated Supervisory Statement is available at: <http://www.bankofengland.co.uk/pradocuments/publications/ss/2015/ss1815update.pdf>.

Prudential Regulation Authority Consults on Contractual Stays in Financial Contracts Governed by Third-Country Law

On May 26, 2015, the PRA published a consultation paper on contractual stays in financial contracts governed by non-EEA law. The consultation paper proposes a new rule to be included in the PRA rulebook that would require the contractual adoption of UK resolution stays in certain financial contracts governed by the laws of a jurisdiction outside the EEA. The rule would apply to PRA regulated banks and investment firms, prohibiting firms from creating new

obligations or materially amending existing obligations under a financial contract governed by third-country law, unless there is agreement in writing with the counterparty to the contract concerning stays in resolution. The rule's aim is to reduce risks of contagion from the failure of a firm and to support orderly resolution so that when resolution action is taken against a firm, this does not immediately lead to the early termination of financial contracts governed by third country law while its financial contracts governed by UK or EU law are stayed. The deadline for comments on the proposed rule is August 26, 2015.

The consultation paper is available at:

<http://www.bankofengland.co.uk/pr/ Documents/publications/cp/2015/cp1915.pdf>.

European Banking Authority Publishes Final Guidelines on Firms Considered as Failing or Likely to Fail

On May 26, 2015, the EBA published its final guidelines on the circumstances in which an institution shall be considered as "failing or likely to fail" under the BRRD. The guidelines are aimed at national regulators and resolution authorities who will determine at their discretion whether an institution is failing or likely to fail. The guidelines set out the broad elements that should be taken into account for such a determination, namely: (i) a current or likely infringement of the requirements for continuing authorization in a way that would justify the withdrawal of authorization; (ii) assets currently lower or likely to be lower than liabilities; (iii) a current or likely inability to pay debts or other liabilities as they fall due; and (iv) a need for extraordinary public financial support. The guidelines will apply from January 1, 2016.

The guidelines are available at: <http://www.eba.europa.eu/documents/10180/1085517/EBA-GL-2015-07+GL+on+failing+or+likely+to+fail.pdf>.

People

Benjamin Lawsky to Step Down as New York Superintendent of Financial Services

On May 20, 2015, Benjamin M. Lawsky, the superintendent of the New York Department of Financial Services, New York's top financial regulator, announced his departure from the NYDFS effective late June 2015. Mr. Lawsky's successor has not yet been announced.

CFTC Announces International Affairs Director Sarah Josephson to Assume New Role at Agency

On May 29, 2015, the Director of the CFTC's Office of International Affairs, Sarah E. Josephson, announced her resignation as director of the OIA and return to her previous position as the CFTC Deputy Director in the Division of Clearing and Risk. Special Counsel, Jeffrey M. Bandman, has been appointed Acting Director of OIA while the CFTC conducts a search for a new director.

US Securities and Exchange Commission Names Andrew J. Donohue as Chief of Staff

On May 28, 2015, the SEC named Andrew J. Donohue the SEC Chief of Staff. Mr. Donohue will replace Lona Nallengara who leaves the SEC in June. As chief of staff, Mr. Donohue will be a senior adviser to SEC Chair Mary Jo White on all policy, management and regulatory issues.

Upcoming Events

June 8, 2015: European Commission public hearing on next steps to build a Capital Markets Union.

June 11, 2015: EBA public hearing on draft ITS on the mapping of External Credit Assessment Institutions for securitization positions.

June 17 and 18, 2015: International Organization of Securities Commissions Annual Conference.

July 2, 2015: EBA public hearing on methodologies for the valuation of derivative liabilities.

July 3, 2015: EBA workshop on the application of the principle of proportionality in the context of institutional and regulatory reforms.

July 6, 2015: EBA public hearing on assigning risk weights to specialized lending exposures.

July 16 and 29, 2015: SEC outreach programs to aid firms in compliance with Regulation Systems Compliance and Integrity.

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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