



## 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.

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## Bank Prudential Regulation & Regulatory Capital

### US Board of Governors of the Federal Reserve System Finalizes Rules Allowing Certain Municipal Securities to be Counted as High-Quality Liquid Assets

On April 1, 2016, the US Board of Governors of the Federal Reserve System released a final rule that would permit certain US general obligation state and municipal securities to count towards the high-quality liquid assets (HQLA) that large banking organizations may use to satisfy the liquidity coverage ratio (LCR) requirement. The LCR, as adopted by the federal banking agencies in September 2014, requires large banking organizations to hold a minimum amount of HQLA no less than their total net cash outflow amount over a 30-day forward-looking period of significant financial stress. Specifically, the final rule allows certain investment-grade, US general obligation state and municipal securities to qualify as HQLA up to certain levels if they meet the same liquidity criteria that currently apply to corporate debt securities. Although the LCR rule did not initially allow US municipal securities to be treated as HQLA, the Federal Reserve noted that subsequent analysis suggested that certain US municipal securities should qualify as HQLA because they have liquidity characteristics similar to other classes of HQLA, including corporate debt securities, and thus should receive similar treatment. The rule goes into effect on July 1, 2016. While the US LCR rule was an interagency rulemaking with substantively identical rules implemented by the Federal Reserve, the US Federal Deposit Insurance Corporation, and the US Office of the Comptroller of the Currency, neither the OCC nor the FDIC issued a similar rule with respect to the treatment of municipal securities as HQLA.

The final rule is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160401a1.pdf>.

### US Federal Deposit Insurance Corporation Vice Chairman Hoenig Discusses a Framework for Tailored Supervision

On April 6, 2016, US Federal Deposit Insurance Corporation Vice Chairman Thomas M. Hoenig discussed the decline of traditional community banks over the last thirty years and the resulting concentration of the US financial system in a few large financial firms. Hoenig outlined his recommendation of a model of regulatory relief that would provide greater flexibility to banks operating in the United States. Notably, Hoenig's framework would abandon references to size thresholds, but would instead grant regulatory relief to banks that: (i) hold no trading assets or liabilities; (ii) hold no derivatives positions other than interest rate and foreign exchange derivatives; (iii) have a total notional value of all their derivatives exposures (including cleared and non-cleared derivatives) of less than \$8 billion; and (iv) maintain a ratio of GAAP tangible equity-to-assets of at least 10 percent. He suggested that such banks should potentially be exempt from Basel capital standards, stress testing requirements, and certain reporting requirements.

Vice Chairman Hoenig's speech is available at:

[https://fdic.gov/news/news/speeches/spapr0616b.html?source=govdelivery&utm\\_medium=email&utm\\_source=govdelivery](https://fdic.gov/news/news/speeches/spapr0616b.html?source=govdelivery&utm_medium=email&utm_source=govdelivery).

### US Federal Deposit Insurance Corporation Chairman Gruenberg Remarks on Banking Industry Consolidation and the Prospect of De Novo Banks

On April 6, 2016, US Federal Deposit Insurance Corporation Chairman Martin J. Gruenberg discussed the consolidation of community banks, noting that while many of the smallest (with assets less than \$100 million) have either consolidated or ceased operations, the number of larger community banks (with assets of between \$1 billion and \$10 billion) has actually increased over the past 30 years. He further noted that approximately 93 percent of FDIC-insured institutions are considered "community banks" and play an important role in providing small loans to farms and businesses and deposit services to communities across the US. However, Gruenberg observed that community banks face many challenges including a decline in net interest margins. He suggested three ways in which the FDIC can help community banks with the challenges they face going forward: (i) tailored supervision; (ii) technical assistance; and (iii) promoting de novo (new) community banks. With respect to tailored supervision, he noted the adjustments in regulations and guidance that account for the size of an institution, including ongoing work to review the rules and

regulations as required by the Economic Growth and Regulatory Paperwork Reduction Act, and to examine potential ways to improve Call Reports and simplify reporting requirements. Notably, as a means to encourage the creation of *de novo* community banks, Chairman Gruenberg announced that the FDIC will reduce the period of heightened supervisory monitoring for *de novo* institutions from seven to three years. In related actions, the FDIC rescinded its Financial Institutions Letter 50-2009 (Enhanced Supervisory Procedures for Newly Insured FDIC-Supervised Depository Institutions) and issued a supplement to its November 2014 guidance related to its Statement of Policy on Applications for Deposit Insurance.

Chairman Gruenberg's speech is available at:

[https://fdic.gov/news/news/speeches/spapr0616.html?source=govdelivery&utm\\_medium=email&utm\\_source=govdelivery](https://fdic.gov/news/news/speeches/spapr0616.html?source=govdelivery&utm_medium=email&utm_source=govdelivery).

The Supplemental Guidance is available at: <https://www.fdic.gov/news/news/financial/2016/fil16024.html>.

### **EU Technical Standards on Leverage Ratio Reporting**

On March 31, 2016, a Commission Implementing Regulation which amends implementing technical standards on supervisory reporting of institutions as regards the reporting of the leverage ratio, was published in the Official Journal of the European Union. The ITS amends the requirement to report the leverage ratio to regulators under the Capital Requirements Regulation. The amending ITS updates prescribed notional values for institutions and derivatives traded to which certain reporting requirements are attached. The amending ITS provides updated leverage reporting ratio templates and instructions for completing the templates. The amending ITS enters into force on April 20, 2016. The regulation shall apply from the first reporting reference date six months from the date of publication in the Official Journal of the European Union.

The ITS is available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.083.01.0001.01.ENG&toc=OJ:L:2016:083:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.083.01.0001.01.ENG&toc=OJ:L:2016:083:TOC).

### **UK 2016 Banking Stress Test Launched**

On March 29, 2016, the Bank of England released details of the UK 2016 banking stress test, the first to be designed under the new approach to stress testing published in October 2015. The 2016 stress test will cover seven UK banks and building societies: Barclays plc, HSBC Holdings plc, Lloyds Banking Group plc, Nationwide Building Society, The Royal Bank of Scotland Group plc, Santander UK plc and Standard Chartered plc. These are the same firms that participated in the 2015 stress test. The stress test will consist of a macroeconomic stress scenario, a traded-risk stress scenario, a misconduct costs stress and an annual cyclical scenario. The results of the stress test will be published in Q4 2016.

Details of the UK 2016 stress test are available at:

<http://www.bankofengland.co.uk/financialstability/Pages/fpc/stresstest.aspx>.

### **UK Countercyclical Buffer Rate Increased from 2017**

On March 29, 2016, the Financial Policy Committee of the BoE published a Statement from its policy meeting on March 23, 2016. The Statement summarizes the conclusions reached by the FPC. The FPC has decided to increase the UK countercyclical buffer rate from 0% of risk-weighted assets to 0.5% with effect from March 29, 2017. The current overlapping aspects of Pillar 2 supervisory capital buffers will be reduced at the same time as a one-off adjustment. The UK CCyB rate will apply to all UK banks and building societies as well as investment firms not exempted by the Financial Conduct Authority. According to the rules of the European Systemic Risk Board, this buffer will also apply to EU banks lending into the UK either on a cross-border basis or through a local branch. The Prudential Regulation Authority has published a Statement clarifying its approach to adjustments to firms' buffers as the CCyB, systemic and conservation buffers are implemented up to 2019. The PRA intends to ensure that the supervisory buffers will be

reduced as soon as practicable after the CCyB rate comes into effect which will depend on the timing of a firm's supervisory review and evaluation process. The adjustments aim to ensure that the transition to the new capital framework avoids double counting in capital buffers covering the same risk and give firms time to transition to the requisite capital buffers by the end of 2019.

The FPC will also assess the implementation and design of internationally-agreed post-crisis regulations to determine whether liquidity could be enhanced. The outcome of that assessment is expected later in 2016.

The FPC Statement is available at: <http://www.bankofengland.co.uk/publications/Documents/news/2016/032.pdf> and the PRA Statement is available at:

<http://www.bankofengland.co.uk/pr/Documents/publications/reports/prastatement0316.pdf>.

### **UK Regulator Proposes Standards for Underwriting Buy-to-Let Mortgages**

On March 29, 2016, the PRA published proposals on minimum standards for firms when underwriting buy-to-let contracts. The proposals would apply to all PRA-regulated firms undertaking buy-to-let lending that are not subject to regulation by the FCA. The PRA is proposing that such firms be required to use an affordability test when assessing a buy-to-let mortgage contract as an interest coverage ratio test and/or an income affordability test. In addition, a standard set of variables would be established that would need to be shown in the tests.

In addition, the PRA has proposed clarification on the application of the small and medium-sized enterprise supporting factor on buy-to-let mortgages which would apply to all firms subject to the Capital Requirements Regulation. Under the CRR, the SME supporting factor is used to reduce the capital requirements on loans to SMEs on qualifying retail, corporate and real estate exposures. The PRA's view is that buy-to-let borrowing is not included in that reduction and the PRA expects firms to consider the purpose of a loan before applying the SME supporting factor. The consultation closes on June 29, 2016.

The consultation paper is available at:

<http://www.bankofengland.co.uk/pr/Documents/publications/cp/2016/cp1116.pdf>.

### **Basel Committee on Banking Standards Second Report on Risk-weighted Assets**

On April 1, 2016, the Basel Committee on Banking Supervision published a second report on banking book risk-weighted asset valuation. The report forms part of the Regulatory Consistency Assessment Programme with the aim of effecting full implementation of the Basel III framework. The Committee's first report in 2013 focused on probability of default and loss-given-default-estimates for sovereign, bank and corporate exposures. This second report examines the variability of RWA in banks that use internal models to calculate their risk regulatory capital requirements. The report is focused on two areas of risk estimates: RWA variability in retail and small and medium-sized enterprise banking books; and variability in estimates of exposure at the time of default across the entire banking book. A major objective of the report is to identify the main drivers of RWA variation and evaluate their effects. The approach taken to explore RWA variation in retail and SME is described as a backtesting (or benchmarking) study that attempts to establish whether bank Internal Ratings Based estimates have a reasonable relationship to actual default and loss outcomes. The other primary objective is to highlight potential modification of current standards, either to reduce practice-based RWA variation or to simplify the IRB capital framework and increase its comparability. Under Basel II banks are required to have strong systems to validate the accuracy and consistency of rating systems, processes and the estimates of all relevant risk components in IRB models. The report outlines practices relating to banks' independent model validation functions. These practices are broken down into the areas of governance, methodology and scope of banks' validation functions and the role of validation across different phases of model development and implementation.

The Second Report is available at: <http://www.bis.org/bcbs/publ/d363.pdf> and the First Report is available at:

<http://www.bis.org/publ/bcbs256.pdf>.

## Compensation

### European Banking Authority Reports on Implications of the EU Compensation Requirements and Bonus Cap

On March 30, 2016, the European Banking Authority published its Benchmarking of Remuneration and High-Earners 2014 report. Under the Capital Requirements Directive, as amended, banks are subject to compensation requirements for staff who have a material impact on the bank's risk profile, and there is a cap on the ratio of variable to fixed compensation for identified staff—known as the bonus cap. The EBA is required to benchmark EU compensation trends and to publish aggregated data on high earners who earn EUR1 million or more per financial year. The EBA's report analyzes information for the year 2014 and compares it to 2013 data. The analysis shows, amongst other things, that: (i) the number of high earners has increased by 21.6%, mostly due to changes in the exchange rate between the euro and pound sterling; (ii) differences in national implementation remain, in particular the application of deferral and pay-out in instruments; (iii) the number of identified staff has increased by 84.34% following the application of the technical standards on criteria to identify staff who have a material impact on a firm's risk profile (introduced in June 2014); and (iv) the ratio between variable and fixed remuneration for identified staff dropped to 65.48% from 104.27% in 2013. The European Commission will take the report into account in its review of the compensation provisions under the CRR.

The EBA's report is available at: <http://www.eba.europa.eu/documents/10180/1359456/EBA+Op-2016-05++%28Report+on+Benchmarking+of+Remuneration+and+High+Earners+2014%29.pdf>.

### European Securities and Markets Authority Joins European Banking Authority in Call for Legislative Changes on Application of Remuneration Requirements

On March 31, 2016, the European Securities and Markets Authority published its final report on Guidelines on the sound remuneration policies under the Units in Collective Undertakings Directive and the Alternative Investment Fund Managers Directive, including the final Remuneration Guidelines under UCITS V and revised Remuneration Guidelines under the AIFMD. ESMA also published a letter addressed to the European Commission, the European Parliament and the Council of the European Union in which ESMA recommends that legislation is required to provide clarity on the application of the proportionality principle to the remuneration requirements under EU laws. ESMA's view is that, under both the UCITS Directive and AIFMD, in certain circumstances the pay-out process rules would not apply and the pay-out process rules could potentially be adjusted for some managers who are subject to those rules. However, in line with the position taken by the EBA for the Capital Requirements Directive, ESMA has developed its UCITS Remuneration Guidelines without taking proportionality into account.

The UCITS Remuneration Guidelines will apply to UCITS management companies and national regulators from January 1, 2017 and will apply for the calculation of payments relating to new awards of variable remuneration to identified staff for the first full performance period after January 1, 2017.

The amended AIFMD Guidelines make provision for the application of the remuneration rules in a group context, in particular where the group may be subject to the remuneration requirements under the CRD. The amended AIFMD Guidelines will apply from January 1, 2017.

ESMA's final report, including the UCITS Remuneration Guidelines and the revised AIFMD Guidelines is available at: <https://www.esma.europa.eu/press-news/esma-news/esma-publishes-ucits-remuneration-guidelines>, ESMA's letter on proportionality is available at: <https://www.esma.europa.eu/press-news/esma-news/esma-publishes-ucits-remuneration-guidelines> and the EBA's Opinion on proportionality under CRD is available at: <http://finreg.shearman.com/european-banking-authority-guide/>.

## Corporate Governance

### US Securities and Exchange Commission Chair Mary Jo White Discusses Technology Developments and Governance Challenges in Financial Markets

On March 31, 2016, US Securities and Exchange Commission Chair Mary Jo White discussed the importance of strong governance and investor protection in the wake of developments and innovation in technology and financial markets. Specifically, Chair White discussed the importance of pre-IPO companies making accurate disclosures, and in particular the implications and potential consequences of the increase in so-called “unicorns,” which are private start-up firms with valuations that exceed \$1 billion. White also remarked on the need to protect investors that are investing under new SEC rules for capital raising under the JOBS Act—Regulation D, Regulation A+ and Regulation Crowdfunding—all of which are designed to allow smaller companies to access the capital markets. White noted that implicit in improving investor protection are strong financial controls and corporate governance, topics which are particularly important for private pre-IPO companies particularly as they go public and grow, often exponentially. Tools such as ensuring relevant expertise on boards and implementing investor protections while pre-IPO companies are private can help mitigate against the risks faced by rapidly growing start-ups. Finally, White noted that the SEC is closely monitoring developments and related investor protection issues in digital finance or fintech, namely blockchain technology, automated investment advice (robo-advisors) and online marketplace lending platforms.

Chair White’s speech is available at: <https://www.sec.gov/news/speech/chair-white-silicon-valley-initiative-3-31-16.html>.

### UK Regulator Publishes Policy Statement and Supervisory Statement on Board Responsibilities

On March 31, 2016, the PRA published a Policy Statement and Supervisory Statement on board responsibilities. The Policy is relevant to all PRA-regulated firms - banks, insurers, designated investment firms, building societies, friendly societies and credit unions. The Supervisory Statement provides PRA guidance on aspects of corporate governance to which the PRA attaches particular importance and to which the PRA may devote particular attention in the course of its supervision. The list, which is not definitive, includes firm strategy, culture, risk appetite and management, board composition, roles of executive and non-executive directors, board time and resources, management information and transparency, succession planning, remuneration, subsidiary boards and board sub-committees. The Supervisory Statement notes that specific accountabilities of individual directors established by the Senior Managers Regime are additional and complementary to the collective responsibility shared by directors as members of the board.

The policy statement is available at: <http://www.bankofengland.co.uk/pradocuments/publications/ps/2016/ps1316.pdf>.

The supervisory statement is available at:

<http://www.bankofengland.co.uk/pradocuments/publications/ss/2016/ss516.pdf>.

## Cyber Security

### US Deputy Treasury Secretary Sarah Bloom Raskin Provides Remarks on Cybersecurity

On March 31, 2016, US Deputy Treasury Secretary Sarah Bloom Raskin discussed the steps financial sector participants should take to respond and recover from a cyber attack. She noted that the key to an effective response and recovery involves preparation, coordination and practice, especially given that in a widespread cyber attack on the financial system, time would be of the essence. While the financial system has not yet experienced such an attack, Raskin warned that recent interconnected cyber attacks, including large-scale Distributed Denial of Service (DDoS) attacks, theft and misuse of customer data and destruction of systems and data, suggest that coordination is imperative in the face of such large-scale attacks. Moreover, Raskin discussed the government’s, and specifically, the US Treasury’s role in responding to, and helping the financial sector recover from, such an attack. Specifically, she mentioned the Treasury’s



role in coordinating with federal and state financial and banking regulators, as well as other government agencies to effectively communicate information and to enhance incident response preparation, including response playbooks and cybersecurity table-top exercises. Raskin encouraged the private sector to create robust cyber incident playbooks which identify key players, actions and timelines to be employed in the event of a cyber attack.

Deputy Treasury Secretary Raskin's speech is available at: <https://www.treasury.gov/press-center/press-releases/Pages/jl0399.aspx>.

## Derivatives

### **The US Commodity Futures Trading Commission and US Securities and Exchange Commission Jointly Propose Guidance on Certain Natural Gas and Electric Power Contracts**

On April 4, 2016, the US Commodity Futures Trading Commission and the Securities and Exchange Commission jointly proposed guidance relating to the treatment of certain electric power and natural gas contracts. Specifically, the guidance proposes that certain capacity contracts in electric power markets and certain natural gas contracts known as peaking supply contracts should not be considered "swaps" under the Commodity Exchange Act, because such contracts are examples of customary commercial arrangements as described in the final rule defining what constitutes a "swap." The proposed guidance will be open for comment for 30 days after it is published in the Federal Register.

The Proposed Guidance is available at:

<http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/federalregister040416.pdf>.

## Enforcement

### **European Securities and Markets Authority Fines Trade Repository for Lack of Access to Trade Repository Data**

On March 31, 2016, ESMA published a decision of its board of supervisors that it had fined the trade repository DTCC Derivatives Repository Ltd EUR 64,000 for failing to provide regulators with access to derivatives trading data. DDRL is part of the DTCC group which includes a number of companies involved in the provision post-trading services to the financial services industry. In May 2014, ESMA became aware of delays by DDRL in providing regulators with access to data reported under the European Market Infrastructure Regulation. The decision of the Board, made March 23, 2016, concluded that DDRL had failed to provide regulators with direct access to derivatives trading data. The failure was caused by failing to put in place data processing systems that were capable of providing regulators with direct and immediate access to reported data. This action was compounded by the DDRL's failure to notify ESMA of the delay and the time taken by DDRL to resolve the issue. Under EMIR, counterparties and CCPs are required to ensure that the details of any derivatives contract which have been concluded, modified or terminated are reported to a trade repository. The details must then be reported to regulators by the trade repository no later than one working day following the conclusion, modification or termination of the contract (provided that the repository receives the report). Trade repositories must make the necessary information available to the ESMA, and other regulators such as the European Systemic Risk Board and national competent authorities in Europe, to enable them to fulfill their responsibilities and mandates. In determining the fine the Board had regard to three aggravating factors: (i) the infringement was committed for more than six months; (ii) the infringement revealed systematic weaknesses in the organization of the trade repository; and (iii) the infringement had a negative impact on the quality of the trade repository data maintained by DDRL. This is the first time ESMA has undertaken enforcement against a trade repository registered in the European Union.

ESMA's decision is available at: <https://www.esma.europa.eu/press-news/esma-news/esma-fines-dtcc-derivatives-repository-limited-%E2%82%AC64000-data-access-failures>.

## Financial Crime

### US Secretary of the Treasury Lew Provides Remarks on the Evolution of Sanctions Regulation

On March 30, 2016, US Treasury Secretary Jack Lew addressed the Carnegie Endowment for International Peace, commenting on the evolution of economic sanctions programs as a tool for US foreign policy. He emphasized the importance of using sanctions, but also cautioned against overusing sanctions and using sanctions where they may have a negligible impact. Critically, Lew noted that economic sanctions are meant to be forward-looking and to change future behavior, rather than to be punitive for past bad actions. Focusing on three key lessons that apply to the appropriate use of sanctions, Lew noted the importance of (i) working with US allies to have broad, international support for economic sanctions; (ii) recognizing the appropriate time to provide relief from sanctions in order to preserve US credibility and the ability to use sanctions programs to motivate behavior changes; and (iii) investing in infrastructure to help implement and support targeted sanctions programs. Secretary Lew remarked on the high costs of sanctions programs, and the potential for overuse to result in negative externalities, including driving business and financial transactions outside of the US.

Treasury Secretary Lew's speech is available at: <https://www.treasury.gov/press-center/press-releases/Pages/jl0398.aspx>.

### European Securities and Markets Authority Consults on Proposed Guidelines on Information Regarding Commodity Derivatives and Spot Markets

On March 30, 2016, the ESMA launched a consultation on proposed guidelines on information expected or required to be disclosed on commodity derivatives markets or related spot markets under the Market Abuse Regulation. MAR will replace the current Market Abuse Directive and its implementing legislation from July 3, 2016. One of the changes that MAR will introduce is the expansion of the definition of inside information relating to commodity derivatives to cover price sensitive information relevant to the related spot commodity contracts as well as the derivative. This means that transactions in commodity derivatives based on inside information relating to underlying spot transactions will be expressly prohibited. In addition, the market manipulation prohibitions will include transactions in derivatives markets that manipulate the related spot commodity transaction and transactions in spot commodity markets that manipulate the related derivative. The definition of inside information for commodity derivatives includes information which is "reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets." ESMA's proposed guidelines aim to set out the types of information that would be considered inside information for commodity derivatives or spot transactions by establishing a non-exhaustive indicative list of information that would be reasonably expected or required to be so disclosed. The consultation closes on May 20, 2016, and ESMA aims to publish its final report by late Q3 2016.

The consultation paper is available at: <https://www.esma.europa.eu/press-news/consultations/consultation-future-mar-list-information-regarding-commodity-and-spot>.

### UK Government Body on Financial Sanction Implementation Established

On March 31, 2016, a new "Office of Financial Sanctions Implementation" (OFSI) was established within Her Majesty's Treasury, with responsibility for ensuring that sanctions are "properly understood, implemented and enforced in the UK." Despite an expansion in the number of sanctions programmes in the EU in recent years, as well as increasingly complex rules, there have not been any significant enforcement actions in the UK, a situation which contrasts with the enthusiastic enforcement practices of US sanctions enforcement agencies. OFSI is expected to work closely with other regulatory authorities, such as the FCA, to apply a more effective sanctions enforcement regime than has previously been the case. To this end, the government is also legislating to ensure that suitable remedies are available for sanctions enforcement. Provisions in the Policing and Crime Bill outline new administrative penalties,



monetary penalties and an increase in the maximum custodial sentence for breaching financial sanctions to seven years on conviction on indictment (or six months imprisonment on summary conviction).

The OFSI website is available at: <https://www.gov.uk/government/organisations/office-of-financial-sanctions-implementation>.

## Financial Services

### US Federal Reserve Bank of New York President Discusses the Role of the Federal Reserve

On March 31, 2016, US Federal Reserve Bank of New York President William Dudley addressed the role of the US Board of Governors of the Federal Reserve System and its structure and governance. He provided a detailed overview of the history of the creation and evolution of the Federal Reserve through the 20th century. He defended the Federal Reserve's actions during the financial crisis, noting that critiques of regulators should focus on shortcomings that led to the economic and financial instability of the crisis and not the Federal Reserve's intervening actions to mitigate the consequences. Dudley discussed the significant changes the Federal Reserve has taken since the financial crisis, including establishing the Large Institution Supervision Coordination Committee to look at the largest institutions and the Office of Financial Stability Policy Research to focus on the financial system at a holistic level. He also noted that the Federal Reserve has taken steps to improve transparency, including more speeches by FOMC members, regular testimony, press conferences and public notices after FOMC meetings. He cautioned against making changes to the structure of the Federal Reserve and the implementation of a formal rule for the Federal Reserve to adhere to in setting monetary policy.

President Dudley's speech is available at: <https://www.newyorkfed.org/newsevents/speeches/2016/dud160331>.

### US Office of the Comptroller of the Currency Releases White Paper on Financial Innovation; Comptroller Curry Discusses the Paper and the OCC's Approach to Innovation

On March 31, 2016, the US Office of the Comptroller of the Currency published a white paper on its vision for responsible innovation in the federal banking system and the eight principles that it will follow in developing a framework to evaluate new financial products and services, including formal outreach to the industry and collaboration with other regulators. The OCC also solicited feedback on how the OCC can facilitate responsible innovation, including what additional tools and resources could assist national banks and federal savings associations with regard to innovation. Comptroller Thomas J. Curry discussed the paper and the OCC's general approach to financial innovation in remarks he gave at Harvard. He discussed the challenges that financial technology companies pose to traditional banks, and how these challenges encourage banks to evolve and improve the products and services they offer to businesses and consumers, but cautioned that banks must do so in a responsible way that is consistent with sound risk management practices. Curry mentioned the possibility of creating a new office dedicated to innovation, and noted the OCC's commitment to work with banks to identify and understand new technology and help banks manage associated risks and comply with consumer safeguards. Comments on the white paper are due by May 31, 2016. The OCC will host a forum on June 23, 2016, to discuss comments on the white paper and lead a discussion on financial services innovation.

The OCC's white paper is available at: <http://www.occ.gov/publications/publications-by-type/other-publications-reports/pub-responsible-innovation-banking-system-occ-perspective.pdf>.

Comptroller Curry's speech is available at: <http://www.occ.gov/news-issuances/speeches/2016/pub-speech-2016-39.pdf>.

### UK Treasury Committee Commissions Maxwellisation Review

On March 31, 2016, the UK House of Commons Treasury Committee wrote to the Chancellor of the Exchequer informing him that it had commissioned a report into the Maxwellisation process. Maxwellisation allows those who are going to be criticized in a public report an opportunity to respond to such criticisms and comment on relevant texts prior

to their publication. The Treasury Committee's view is that one of the reasons for the delay in the publication of the UK regulators report into the collapse of HBOS was that Maxwellisation was applied, which took some 14 months. The HBOS report was published in December 2015 - seven years after HBOS failed. The Treasury Committee has asked Andrew Green QC to prepare a report on the legal requirements for, the issues that arise in the application of, Maxwellisation and to make recommendations on how Maxwellisation can be applied in a fair and proportionate manner in future public financial enquiries. The report will focus on the financial services sector only.

The Treasury Committee's letter is available at: <http://www.parliament.uk/documents/commons-committees/treasury/Correspondence/Letter-from-Treasury-Committee-Chair-to-Rt-Hon-George-Osborne-MP-Maxwellisation.pdf> and the Terms of Reference of the Maxwellisation Review are available at: <http://www.parliament.uk/documents/commons-committees/treasury/Correspondence/Terms-of-Reference-of-the-Maxwellisation-review.pdf>.

## Funds

### Financial Stability Board to Consult on Addressing Risks Posed by Asset Management Activities

On March 31, 2016, the Financial Stability Board announced that it would publish proposed policy recommendations to address structural vulnerabilities in asset management activities. The recommendations will aim to address several risks that such activities present: funds' liquidity mismatch, leverage within funds, operational risk and challenges in transferring investment mandates in a stressed situation and securities lending activities of asset managers and funds. The FSB intends to finalize the recommendations by the end of 2016. The announcement was included in a press release which summarizes the outcomes of the FSB's recent meeting in Tokyo. The FSB will also be focusing on CCP resolution this year and intends to publish guidance on CCP resolution by September and consult on standards or guidance on issues relating to CCP resolution before the end of the year.

The FSB announcement is available at: <http://www.fsb.org/wp-content/uploads/Tokyo-plenary-press-release.pdf>.

## Payment Services

### US Commodity Futures Trading Commission Commissioner Giancarlo Discusses Blockchain Regulatory Framework

On March 29, 2016, US Commodity Futures Trading Commission Commissioner Christopher Giancarlo discussed distributed ledger technology, commonly known as DLT or "blockchain" and its potential to "revolutionize the world of finance." He noted some of the potential uses of blockchain technology, including increasing settlement efficiency and speed, linking recordkeeping networks, reducing transaction costs and increasing market access. Giancarlo also noted potential opportunities in payments, banking, securities settlement, title recording, cyber security and trade reporting and analysis. Citing the collapse of Lehman Brothers, Giancarlo emphasized that blockchain technology could provide regulators better visibility into trading portfolios between counterparties, allowing them to react sooner in the face of financial deterioration. Analogizing the development of blockchain to the inception of the internet, Commissioner Giancarlo called on US regulators to let the private sector lead and to avoid impeding innovation and investment as the technology develops. He advocated for a principles-based approach developed in coordination between US and foreign regulators. Finally, he noted that regulators should revisit existing rules and recordkeeping requirements to be sure that they do not inhibit innovation. With respect to the CFTC specifically, he said his agency will revisit Rule 1.31 (a recordkeeping rule that requires all books and records to be kept in their original form or native file format).

Commissioner Giancarlo's speech is available at: <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-13>.

## Upcoming Events

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.

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

June 23, 2016: OCC Forum on Responsible Innovation

## Upcoming Consultation Deadlines

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

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

May 2, 2016: FDIC/SEC Notice of Proposed Rulemaking on Covered Broker-Dealer Provisions under Title II of the Dodd-Frank Act.

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.

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

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

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

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

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

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

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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