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

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Bank Prudential Regulation & Regulatory Capital

UK Prudential Regulator Proposes Period of Overlap for Transition to New Pillar 2 Reporting Template

On October 12, 2018, the U.K. Prudential Regulation Authority published a consultation proposing a six-month overlap period following the introduction of the new Pillar 2 Liquidity reporting template (PRA110) from July 1, 2019. The Capital Requirements Directive gives national regulators discretion to set additional Pillar 2 liquidity requirements, to capture those liquidity risks that are either not captured or not fully captured under the Pillar 1 framework. The final element—Pillar 3—involves public reporting of capital. The PRA published its final Policy Statement on the introduction of its Pillar 2 framework in February 2018. The PRA110 template was scheduled to replace the existing "daily flows" and "enhanced mismatch" liquidity reports (FSA047 and FSA048) from July 1, 2019.

Since its Policy Statement, the PRA has reassessed the risks from transitioning to the PRA110 template and considers it prudent to delay the termination of FSA047 and FSA048, to ensure data quality and continuity. The PRA proposes that the PRA110 is introduced on July 1, 2019 as planned. However, between then and January 1, 2020, firms should additionally continue to submit liquidity reports using FSA047 and FSA048. The overlap will allow the PRA and firms alike to assess the quality of PRA110 reporting.

The PRA is inviting comments on the proposal by November 12, 2018. The PRA considers that the short consultation period is justified due to the fact that firms are already reporting using FSA047 and FSA048.

The consultation paper (PRA CP22/18) is available at: https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp2218.pdf and details of the PRA's Pillar 2 Policy Statement are available at: https://finreg.shearman.com/uk-prudential-regulation-authority-publishes-fin.

UK Financial Policy Committee Publishes Outcome of Its October Meeting

On October 9, 2018, the Financial Policy Committee published a statement from its meeting held on October 3, 2018 where it reviewed developments since June 19, 2018. The FPC continues to consider that the U.K. banking system is sufficiently robust to withstand the disruption of a "hard Brexit" and that there is no need for additional capital buffers for banks as a result. The FPC is of the view that the banking system would be able to absorb, in addition to a disorderly Brexit, further costs that might arise from trade tensions. However, the FPC is concerned about the lack of action taken by EU authorities to address the risks of disruption in the event of the U.K. leaving the EU without a deal on March 29, 2019. In particular, the FPC would like mitigating action to be taken to address the risks associated with derivatives contracts and the transfer of personal data.

Aside from the risks presented by Brexit, the FPC considers that domestic risks are still at a standard level overall. However, the FPC is concerned about the swift growth of leveraged lending and intends to: (i) assess the implications for banks in the 2018 stress test; and (ii) review the impact of the increasing role of non-bank lenders and changes in the distribution of corporate debt. The FPC has decided to maintain the U.K. countercyclical capital buffer rate at 1% and will review the rate again at its meeting on November 28, 2018.

The FPC also announced that the launch of the next biennial exploratory scenario will be delayed to September 2019 as firms and the Bank of England continue to devote resources to prepare for Brexit.

The FPC's statement is available at: https://www.bankofengland.co.uk/statement/fpc/2018/financial-policy-committee-statement-october-2018.

Brexit for Financial Services

UK Government's Guidance on Approach to Sanctions in a 'Hard Brexit' Scenario

On October 12, 2018, the U.K. Foreign and Commonwealth Office published guidance on the U.K. government's approach to implementing sanctions in the event that no deal is agreed between the EU and the U.K. on the U.K.'s exit from the EU. If there is no deal, the U.K. will leave the EU on March 29, 2019.

The U.K. currently implements sanctions agreed by the UN Security Council, according to international law requirements, and the EU, as provided for in EU legislation and U.K. implementing legislation. In the event of a "hard Brexit," the U.K. would continue to implement sanctions agreed by the UN Security Council and would have the power to adopt other sanctions under the Sanctions and Anti-Money Laundering Act 2018. The FCO would publish the names of individuals and organizations subject to U.K. sanctions.

If there is no Brexit deal, the FCO proposes that new U.K. legislation would be made under the Act to implement existing EU sanctions regimes. This new draft legislation is expected to be laid before Parliament before March 2019. If new legislation did not address an existing EU sanctions requirement, the requirement would be carried into U.K. law under the provisions of the European Union (Withdrawal) Act, which would avoid any gaps in the law. This means that anyone concerned with sanctions requirements would need to refer to both the new U.K. legislation and any retained EU laws to ascertain the relevant requirements. The FCO advises that it should not be assumed that the new U.K. legislation will exactly replicate the existing EU regime, in particular where a firm or individual currently benefits from an existing exemption. In addition, firms and individuals that need information about licenses and exemptions from sanctions should contact the Office for Financial Sanctions Implementation and the Export Control Joint Unit. In the event of a "hard Brexit," the FCO states that it will publish further guidance on sanctions.

The guidance is available at: https://www.gov.uk/government/publications/sanctions-policy-if-theres-no-brexit-deal/sanctions-policy-if-theres-no-brexit-deal.

Draft UK Post-Brexit Legislation to Onshore the EU Markets in Financial Instruments Package

On October 11, 2018, HM Treasury published a draft of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, along with explanatory information. The draft Regulations are primarily relevant for MiFID II-authorized firms including investment banks, stock and futures exchanges, broker-dealers, investment advisers and investment managers.

The draft Regulations have been prepared in preparation for a "no-deal" scenario, in which the U.K. exits the EU on March 29, 2019 without a ratified Withdrawal Agreement. The no-deal scenario would mean that there would be no transitional period following Brexit and that the U.K. would be treated as a third-country after exit day. The changes set out in the draft Regulations will not take effect if the U.K. enters a transition period.

The draft Regulations have been prepared to ensure that U.K. financial markets and their participants continue to operate under essentially the same regulatory regime after EU withdrawal. To ensure that the MiFID II regime operates effectively after exit day, the draft Regulations also remove deficiencies in: (i) the EU legislation being retained on Brexit, namely the Markets in Financial Instruments Regulation and related Commission Delegated Regulations; and (ii) the U.K. legislation that implemented or has been affected by the MIFID II package, namely the Markets in Financial Instruments Regulations 2017, the U.K.'s Financial Markets and Services Act 2000 (Regulated Activities) Order 2001 and certain other U.K. Statutory Instruments.

The draft Regulations make the following changes to U.K. and retained EU legislation to correct deficiencies:

I. ***Transfer of functions***. The draft Regulations transfer the functions under MiFID II that were carried out by the European Securities and Markets Authority to the Financial Conduct Authority and the PRA. Certain MiFID II functions carried out by the European Commission are to be transferred to HM Treasury.

II. ***Binding Technical Standards (BTS)***. The FCA and PRA will be empowered by HM Treasury—under the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018—to correct deficiencies in the BTS for Brexit and to maintain them afterward. The PRA will be proposing changes to the relevant parts of the MiFID II BTS for which it is responsible in due course. The FCA has already launched a consultation on its proposed onshoring of and changes to the MiFID II BTS for which it is responsible. That consultation closes on December 7, 2018.

III. ***Information sharing and cooperation requirements between UK and EEA regulators***. The draft Regulations remove obligations imposed by MiFID II on U.K. authorities to cooperate and share information with EEA authorities. After Brexit, U.K. authorities will still seek to cooperate and share information with EEA authorities where appropriate, but this would presumably take place under memoranda of understanding.

IV. ***Third-country equivalence***. The draft Regulations make provision for HM Treasury to take on the European Commission's function of making equivalence decisions for third-country regimes after Brexit. Equivalence determinations that have been made by the Commission prior to exit day will be carried through into U.K. law.

V. ***Temporary permissions regime - MiFID II firms***. EEA Firms that are currently providing services in the U.K. by means of a passport under MiFID II will be eligible (along with firms exercising passport rights under certain other EU legislation) to enter the TPR (to be introduced by the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (the TPR Regulations)), which were laid before Parliament in September 2018). The draft Regulations introduce the possibility of "substituted compliance" with MiFID II's rules in cases where not doing so could lead to conflicts of law. The effect of substituted compliance will be that a firm operating under the TPR will not be deemed to be in breach of the U.K.'s MiFID II rules if it can demonstrate that it complies with corresponding provisions in the EU's MiFID II rules. The draft Regulations will disapply some requirements or rights for firms operating under the TPR that would not be workable without a negotiated agreement with the EU.

VI. ***Data Reporting Services Providers (DRSPs)***. EEA-authorized DRSPs will fall outside the scope of the TPR and will need to seek U.K. authorization to continue to operate in the U.K. after Brexit. The draft Regulations amend the U.K.'s Data Reporting Services Regulations 2017 to establish transitional arrangements for EEA-authorized DRSPs that meet certain conditions, enabling them to be granted temporary authorizations to continue to provide data reporting services in the U.K. for a period of up to one year. The FCA has made information available on its website for EEA DRSPs wishing to obtain temporary authorization.

VII. ***Recognition of EU firms, instrument scopes and market data***. To facilitate a smooth transition, the draft Regulations make a number of exceptions to the baseline approach of treating the EU as a third-country after exit day. The exceptions relate to EEA emission allowances, the treatment of energy forwards that must be physically settled, the so-called, "Ancillary Activities Exemption" for commercial firms trading commodity derivatives and the treatment of Undertakings for Collective Investment in Transferable Securities (UCITS) in the EU as automatically non-complex by U.K. firms.

VIII. ***MiFID II transparency regime***. The draft Regulations grant temporary powers to the FCA which will allow some flexibility over how the MiFID II transparency regime is operated during a transitional period of up to four years, including power to: (i) amend certain transparency calibrations (which are otherwise frozen on exit day); (ii) direct the application of the Double Volume Cap Mechanism; and (iii) freeze the obligation to publish trading information for certain instruments. The draft Regulations also introduce other changes that will enable the FCA to take into account trading data from countries other than the U.K. when setting transparency thresholds.

IX. ***MiFID II transaction reporting regime***. The draft Regulations will require U.K. branches of EU firms to provide post-trade transaction reports to the FCA (rather than, as currently, to their home state regulator) so that the FCA can obtain reporting from all U.K. established firms and monitor for potential market abuse. The scope of the reporting obligation will not change—reports must be submitted on trades in financial instruments admitted to trading, or traded, on trading venues in the U.K. and in the EU.

HM Treasury intends to lay the draft Regulations before Parliament in the autumn. It is intended that provisions in the draft Regulations that relate to temporary authorizations for DRSPs will come into force on the day after the day on which the Regulations are made, with the remainder of the Regulations coming into force on exit day in the event that there is a no-deal scenario. MiFID II-authorized firms will also be impacted by further Brexit-related amendments to other U.K. legislation which remain to be published. This includes

forthcoming legislation to amend the Financial Services and Markets Act 2000, non-MiFID II aspects of the RAO and the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001.

The draft Regulations are available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746247/MiFI__Amendment___EU_Exit__Regulations_3-10-18C.PDF and the explanatory information is available at: https://www.gov.uk/government/publications/draft-markets-in-financial-instruments-amendment-eu-exit-regulations-2018/markets-in-financial-instruments-amendment-eu-exit-regulations-2018-explanatory-note.

UK Regulator Consults on Post-Brexit Temporary Permissions Regime for EEA Firms and Funds

On October 10, 2018, the FCA published a consultation on its proposed approach to a TPR for EEA firms and investment funds that currently provide services in the U.K.—either via a branch or cross-border—pursuant to a single market passport. The proposed TPR is designed to minimize the potential harm caused by an abrupt loss of the passport in a "no-deal" scenario, in which the U.K. exits the EU without a ratified Withdrawal Agreement, which would mean that there would be no transitional period following Brexit and that the U.K. would be treated as a third-country after exit day. The TPR will enable EEA firms and investment funds to continue to provide services in the U.K. for a limited period following exit day.

The proposed TPR will take effect on March 29, 2019 in the event of no deal. Should the U.K. and EU negotiations lead to ratification of the Withdrawal Agreement, the TPR will not enter into force. Instead, during the transitional period, firms and investment funds would continue to have access to the same passporting arrangements as they do now.

HM Treasury laid the draft TPR Regulations before Parliament in September 2018. Its provisions make the required changes to the U.K.'s legal and regulatory framework to create the TPR for EEA firms that passport into the U.K. and EEA firms that are outside the passporting framework but that operate in the U.K. through the exercise of so-called "Treaty Rights." On October 10, 2018, HM Treasury also published drafts of: (i) the Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018; and (ii) the Collective Investment Schemes (Amendment etc) (EU Exit) Regulations 2018. These draft statutory instruments establish TPRs for investment funds and fund managers.

The FCA must make the necessary changes to its Handbook to apply appropriate rules to firms and funds in the TPR. The consultation provides the background to, and an overview of, the TPR and explains how the regime will operate for firms and investment funds, including details of the firms, funds and fund managers that will be eligible to enter the TPR. The consultation paper also sets out additional information for e-money institutions, payment institutions and registered account information service providers. Some FCA rules apply to these firms but most of the rules that will apply to them are set out in a separate TPR for Payment Firms, which will be introduced under the proposed Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018.

The TPR will be available for:

I. EEA firms that qualify for authorization before exit day to carry on a regulated activity in the U.K. in line with Schedule 3 of FSMA;

II. Treaty firms that qualify for authorization before exit day to carry on a regulated activity in the U.K. in line with Schedule 4 of FSMA;

III. EEA firms or Treaty firms as above but with a "top-up" permission;

IV. EEA authorized payment institutions and EEA registered account information service providers that, before exit day, are entitled to offer payment services in the U.K. in the exercise of a passport right;

V. EEA authorized electronic money institutions that, before exit day, are entitled to offer electronic money issuance, redemption, distribution or payment services in the U.K. in the exercise of a passport right;

VI. EEA-domiciled UCITS funds that have been recognized under FSMA to market to all investors in the U.K.;

VII. EEA-domiciled Alternative Investment Funds (AIFs) that are entitled to be marketed to professional investors in the U.K. under the Alternative Investment Fund Managers Regulations 2013, following receipt by the FCA of a regulator's notice or following approval by the FCA, where required;

VIII. EU Venture Capital Funds (EuVECAs) and EU Social Entrepreneurship Funds (EuSEFs) that, immediately before exit day, have been notified to the FCA for marketing in the U.K. in line with the EuVECA Regulation or the EuSEF Regulation; and

IX. EU Long-Term Investment Funds (EuLTIFs) which are entitled to be marketed to all investors, or to professional investors only, in line with the notification procedures for AIFs.

The TPR will not be available for other types of entities that do not use the same means to access the U.K. market. These include credit-rating agencies, trade repositories and DRSPs. The FCA has made information available separately on the arrangements for these entities. Similarly, separate arrangements will apply to market operators and CCPs, although there is no TPR announced for regulated markets or direct insurers or assurance firms. The government has committed to legislate, if necessary, to ensure that contractual obligations (such as under insurance contracts) between EEA firms and U.K.-based customers that are not covered by a TPR can continue to be met.

The FCA clarifies that incoming EEA credit institutions that are intending to continue to accept deposits in the U.K. after exit day and insurers will need to be authorized by the PRA. These firms should contact the PRA if they have not already done so, but, given that they will also be subject to the FCA's rules, they should also take note of the consultation proposals.

The overall aim of the FCA's proposals is to preserve the status quo as much as possible, so that firms and funds in the TPR will generally need to comply with the same rules as currently. The FCA is seeking specific feedback on:

a. ***How it will apply its rules to firms and investment funds in the TPR***. The consultation proposals relate to: (i) the FCA's Principles for Businesses; (ii) new rules in the General Provisions sourcebook (GEN) setting out the general approach for rules that will apply to firms in the TPR; (iii) new rules to be added to GEN setting out the general approach for rules that will apply to marketing of EEA-domiciled investment funds in the TPR; (iv) a new chapter in the Client Assets sourcebook for the rules applicable to firms in the TPR (CASS 14); and (v) funding the Single Financial Guidance Body and the Illegal Money Lending levy.

b. ***Proposals for how the TPR will be funded***. The FCA proposes that the TPR is funded by periodic fees from firms and funds in the regime, generally on the same basis as U.K. firms. Additionally, the FCA proposes to levy special project fees from individual firms in the regime, to recover its exceptional supervisory costs where a firm undertakes certain restructuring transactions.

Comments on the consultation proposals are invited by December 7, 2018. The consultation is open for only eight weeks to ensure that the FCA has sufficient time to incorporate comments from stakeholders ahead of exit day. The FCA intends to publish feedback to the consultation responses and to finalize its proposals early in 2019. The FCA expects to open the TPR notification window in early 2019 and to close it before exit day. The FCA will confirm the exact dates and times in due course.

The consultation paper (FCA CP 18/29) is available at: https://www.fca.org.uk/publication/consultation/cp18-29.pdf, details of the draft EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 are available at: https://finreg.shearman.com/uk-secondary-legislation-published-for-post-brexi, details of the temporary recognition regime for CCPs are available at: https://finreg.shearman.com/uk-legislation-published-for-a-post-brexit-recogn and details of the FCA's approach to EEA market operators seeking to apply to become recognized overseas investment exchanges are available at: https://finreg.shearman.com/uk-regulator-publishes-application-requirements-f.

UK Regulator Consults on Brexit-Related Changes to Its Rulebook and Binding Technical Standards

On October 10, 2018, the U.K. FCA published its first consultation on proposed changes to the FCA Handbook to ensure a functioning legal and regulatory framework for financial services in the event of a "no-deal" scenario whereby the U.K. exits the EU on March 29, 2019 without a ratified Withdrawal Agreement in place and there is consequently no transitional period for firms. The proposed amendments will not take effect if the U.K. enters into a transitional period after exit day.

The consultation includes the FCA's proposals in relation to the BTS it has been empowered by HM Treasury to amend prior to Brexit and to maintain afterward. These are the retained EU "Level 2" delegated and implementing regulations that set out regulatory technical standards and implementing technical standards. The consultation also sets out the FCA's proposed approach to non-legislative "Level 3" materials such as guidelines, recommendations and opinions that will also be onshored.

The FCA states in the consultation that the majority of the proposed changes are consequential in nature and follow the amendments to retained EU law that HM Treasury is proposing, as set out in the series of financial services-related statutory instruments being made under the European Union (Withdrawal) Act 2018.

The FCA has worked collaboratively with HM Treasury and other government departments. This first consultation covers amendments to the Handbook and BTS that flow from the provisions of the draft SIs that have been published by HM Treasury to date. The consultation covers:

I. ***Cross-cutting issues***. A number of Brexit-related amendments are being made to multiple parts of the Handbook. This includes, for example, replacing references to EU law with references to new or newly-revised U.K. law, removing references to EU Treaties and replacing references to EU institutions with references to U.K. institutions.

II. ***Amendments to specific sourcebooks and chapters in the Handbook***. In this consultation the FCA flags those sourcebooks and chapters that will be amended for cross-cutting issues and gives further explanations on its proposed changes for some sourcebooks, where it considers either that details of its rationale would be helpful or where it has deviated, along with HM Treasury, from the usual baseline approach of treating EEA firms as third-country firms after exit day. The FCA provides further details on changes to: (i) prudential standards; (ii) conduct of business rules; (iii) fund management rules; and (iv) the Handbook provisions implementing MiFID II.

III. ***The FCA's approach to BTS***. Along with the BoE, the PRA and the Payment Systems Regulator, the FCA has been given delegated powers by HM Treasury—under the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018—to correct deficiencies in the BTS for Brexit and to maintain them afterward. The consultation sets out the FCA's proposed changes to some, but not all, of the financial services-related BTS, namely the BTS that relate to credit rating agencies, fund management, trade repositories, MiFID II/MiFIR, short selling and capital requirements. The amended BTS will be set out in legal instruments that will be approved by HM Treasury. The FCA proposes to remove some BTS that will not be applicable under the onshored legislation as they relate to obligations which will cease as the U.K. exits the EU. The FCA will consult on changes to the remaining BTS in a planned second consultation later in the year.

IV. ***The FCA's approach to non-legislative "Level 3" materials***. The FCA sets out its approach to the broad range of non-legislative material produced by the European Supervisory Authorities or their predecessor bodies (for example, the Committee of European Securities Regulators) that will not be incorporated into U.K. law by the EUWA. This non-legislative material includes Guidelines, Recommendations, Opinions and Q&A. The FCA explains that it does not propose to carry out a detailed line-by-line review of all existing Level 3 materials and that firms and market participants should interpret existing Level 3 materials "sensibly and purposively" after Brexit. The FCA seeks feedback on proposed non-Handbook guidance to the effect that it expects as far as possible to comply with ESA Guidelines after Brexit (to the extent that it currently complies with them), that it recognizes the value and continuing relevance of Level 3 material and that it will expect firms and market participants to continue to apply Level 3 Guidelines and Recommendations as they did before exit day.

The FCA is seeking responses to the consultation by December 7, 2018. Handbook provisions and BTS that have not been addressed in this consultation may be addressed in a second consultation later in the year when the related SIs have been published by HM Treasury. The FCA expects to issue feedback on this first consultation early in 2019 and final rules before March 29, 2019. The rule changes and BTS will take effect

on March 29, 2019 in the event there is no agreed transition period. The FCA has been given a temporary transitional power to phase in the requirements on firms and states that it will be willing to consider exercising its waiver and rule modification powers to ease firms' transition to the new rules.

The consultation paper (FCA CP 18/28) is available at: https://www.fca.org.uk/publication/consultation/cp18-28.pdf, details of the European Union (Withdrawal) Act 2018 are available at: https://finreg.shearman.com/uk-brexit-legislation-receives-royal-assent, details of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 are available at: https://finreg.shearman.com/uk-government-and-regulators-set-out-approach-to-, details of onshoring legislation on capital requirements are available at: https://finreg.shearman.com/uk-releases-draft-legislation-to-onshore-eu-regul and details of onshoring legislation on short selling are available at: https://finreg.shearman.com/uk-post-brexit-secondary-legislation-on-short-sel.

UK Regulator Provides Information on Brexit Process for Credit Rating Agencies, Trade Repositories and Data Reporting Services Providers

On October 10, 2018, the FCA published three press releases announcing how entities can register with it as a CRA, a trade repository or apply for temporary authorization as a DRSP in preparation for the U.K. leaving the EU without a deal. The press releases follow the draft legislation and explanatory guidance recently published by HM Treasury and the FCA's first consultation on onshoring the EU technical standards through changes to its rulebook.

For CRAs, the U.K. intends to establish a conversion regime (for U.K. CRAs and third-country CRAs currently registered or certified by ESMA) and a temporary registration regime (for newly established U.K. entities that are part of a group of CRAs with an existing ESMA registration before exit day). The FCA's CRA press release informs CRAs of how they can notify the FCA of their intention to use one of these regimes and provides an indicative timeline for the legislation and regime to be put into place.

The draft Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018, published by HM Treasury on October 5, 2018, will establish a similar conversion regime and temporary registration regime for trade repositories. The FCA's press release asks trade repositories to notify it if they intend to use one of these regimes and provides an indicative timeline. It also confirms that further draft legislation is expected in 2018 on trade repository requirements, supervision and enforcement as well as on the equivalence regime for third-country trade repositories.

The revised Markets in Financial Instruments Directive currently establishes the authorization and organizational requirements for, and rules concerning publication of transactions by, DRSPs. A DRSP established in an EEA member state may currently provide its services in the U.K. based on its home member state authorization. When the U.K. leaves the EU, this will no longer be the case and non-U.K. EEA DRSPs will need to apply to the FCA for authorization. A temporary authorization regime will allow EEA-authorized DRSPs to provide a data reporting service in the U.K. for a year after March 29, 2019. The FCA's press release requests that DRSPs that want to use the temporary authorization regime notify the FCA and ensure connectivity to the FCA's Market Data Processor (MDP) system, including providing information on how these can be accomplished.

The CRA press release is available at: https://www.fca.org.uk/news/statements/registering-credit-rating-agency, the trade repository release is available at: https://www.fca.org.uk/news/statements/registering-trade-repository and the DRSP release is available at: https://www.fca.org.uk/news/statements/temporary-authorisation-regime-data-reporting-services-providers-drsps.

Draft UK Post-Brexit Legislation to Onshore EU UCITS Directive Published

On October 10, 2018, HM Treasury published a draft of the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2018, along with explanatory information. The draft Regulations will onshore the UCITS Directive for Brexit.

The draft Regulations are primarily relevant for EEA fund managers operating UCITS authorized in the U.K., fund managers marketing EEA UCITS into the U.K. and depositaries that provide services to U.K. authorized funds. HM Treasury has also published separately the draft U.K. legislation to onshore EU legislation for AIFs for Brexit.

The draft Regulations have been prepared in preparation for a "no-deal" scenario, in which the U.K. exits the EU on March 29, 2019 without a ratified Withdrawal Agreement. The no-deal scenario would mean that there would be no transitional period following Brexit and that the U.K. would be treated as a third-country after exit day. The changes set out in the draft Regulations will not take effect if the U.K. enters a transition period.

The UCITS Directive applies only to collective investment schemes established in the EEA that have applied for authorization to be marketed to retail investors. The Directive sets out the framework for authorization and supervision of these EEA "UCITS" funds and provides for the authorization and regulation of their management companies.

The draft Regulations amend the U.K. law that implemented the UCITS Directive to ensure that the regime continues to operate effectively in the U.K. after exit day. This includes amendments to FSMA, the RAO and the UCITS Regulations 2011, along with amendments to various other pieces of U.K. secondary legislation. The draft Regulations also make amendments to retained EU delegated regulations, including on investor information and on depositary obligations.

The draft Regulations make the following key changes to U.K. and retained EU legislation to correct deficiencies and ensure a workable U.K. regime for UCITS funds after exit day.

I. U.K. UCITS regime. Due to one precondition for classification as a UCITS fund under EU law being EU establishment, U.K.-established UCITS will lose their legal status on exit day. The Regulations will create a U.K. UCITS regime for UCITS that are established and authorized in the U.K. A consequential change in the RAO will be the addition of a regulated activity of "managing a U.K. UCITS."

II. UCITS investment rules. With the aim of providing continuity for investors, the draft Regulations will carry through to the U.K. UCITS regime the existing investment rules under the UCITS Directive. These relate to eligible assets, borrowing, leverage and preferential treatment for EEA assets over third-country assets in certain circumstances.

III. Cash of UCITS. The draft Regulations will allow the cash of a U.K. UCITS to continue to be booked in accounts opened with any EEA credit institution.

IV. Temporary permission - EEA UCITS marketed in the U.K. via a passport. The draft Regulations introduce a TPR for EEA UCITS, enabling EEA funds and sub-funds to continue to access the U.K. market for a limited period after exit day. This UCITS TPR will also be available Money Market Funds that use a UCITS structure. The operator of an EEA UCITS which markets into the U.K. before Brexit will need to inform the FCA prior to exit day that it wishes the relevant fund(s)—and any sub-fund(s) to have temporary permission to be marketed in the U.K.. The UCITS TPR will extend for three years after exit day, with discretion for HM Treasury to extend the regime by increments of up to 12 months in specified circumstances. EEA UCITS will be deemed to be "recognized schemes" for the duration of the TPR and must comply with certain obligations. On its expiry, these funds must apply for recognized status under FSMA in order to continue to be marketed in the U.K. to retail investors. The FCA has consulted separately on its proposed approach to a TPR for EEA firms and investment funds.

V. Transitional arrangements for U.K.-authorized funds. U.K. authorized funds (whether they are authorized unit trust schemes, authorized contractual schemes or authorized open-ended investment companies) ordinarily require a U.K.-based depositary, trustee, operator and/or manager, depending on their structure. Transitional provisions in the draft Regulations will operate so that a U.K. authorized fund is not prevented from having as its manager, trustee or depositary an EEA firm that has temporary permission to conduct activities in the U.K. by virtue of the TPR for EEA firms (established by the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU

Exit) Regulations 2018). The transitional provisions will disapply the U.K. incorporation requirements of the depositary, trustee, operator and/or manager after exit, for as long as the relevant firm has temporary permission.

VI. Cross-border and domestic mergers. After exit day, it will not be possible to effect cross-border mergers between U.K. UCITS and EEA UCITS. The draft Regulations retain provisions enabling or referring to mergers of U.K. UCITS but remove provisions relating to cross-border mergers.

HM Treasury intends to lay the draft Regulations before Parliament in the autumn. It is intended that provisions in the draft Regulations that relate to temporary recognition will come into force on the day after the day on which the Regulations are made, with the remainder of the Regulations coming into force on exit day in the event that there is a no-deal scenario.

The draft Regulations are available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746543/2018.10.04_CIS__Amendment_etc.___EU_Exit__SI_Draft_40__watermarked___002_.pdf and the explanatory information is available at: https://www.gov.uk/government/publications/draft-eu-exit-sis-for-investment-funds-and-their-managers/the-collective-investment-schemes-amendment-etc-eu-exit-regulations-2018-explanatory-information.

Draft UK Post-Brexit Legislation to Onshore Alternative Investment Fund Managers Directive

On October 10, 2018, HM Treasury published a draft of the Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018, along with explanatory information. The draft Regulations will onshore the Alternative Investment Fund Managers Directive for Brexit.

The draft Regulations are primarily relevant for Alternative Investment Fund Managers that are already regulated in the U.K. under the Alternative Investment Fund Managers Regulations 2013 and AIFMs currently marketing EEA AIFs in the U.K. They are also relevant for fund managers that market EEA UCITS into the U.K. HM Treasury has published separately the draft U.K. legislation to onshore EU legislation for UCITS funds for Brexit.

The draft Regulations have been prepared in preparation for a "no-deal" scenario, in which the U.K. exits the EU on March 29, 2019 without a ratified Withdrawal Agreement. The no-deal scenario addressed in the draft Regulations involves no transitional period following Brexit and the U.K. being treated as a third-country under EU law after exit day. The changes set out in the draft Regulations will not take effect if the U.K. enters a transition period.

AIFs are funds that are not regulated at EU level by the UCITS Directive. The AIFMD has, since 2011, set out the regulatory framework for AIFMs on the management, administration and marketing of AIFs in the EEA. Currently, so-called "full-scope" EEA AIFMs (that is, those with assets under management above a specified size threshold) that are authorized in one EEA member state can benefit from a passport enabling them to market and/or manage AIFs in any other EEA member state. AIFMD also provides for a so-called "third-country passport," which is not yet operational due to its implementation having been significantly delayed. As a result, most third-country firms currently rely on the separate private placement regime in AIFMD.

The draft Regulations amend the U.K. law that implemented the AIFMD to ensure that the regime continues to operate effectively in the U.K. after exit day. This includes amendments to the AIFM Regulations 2013 and the AIFM (Amendment) Regulations 2013. The draft Regulations also make amendments to the U.K.'s onshored versions of EU delegated regulations on: (i) exemptions, general operating conditions, depositaries, leverage, transparency and supervision; (ii) the opt-in procedure for AIFMs; and (iii) determination of the member state of reference of third-country AIFMs.

The draft Regulations make the following key changes to U.K. and retained EU legislation to correct deficiencies and ensure a workable U.K. regime for AIFs and AIFMs after exit day.

I. Meaning of "AIF." The draft Regulations will amend the definition of an AIF such that an AIF is defined as an investment fund that is not subject to the U.K.'s post-Brexit UCITS regime. The U.K.'s UCITS regime will be implemented separately pursuant to the draft Collective Investment Schemes (Amendment) (EU Exit) Regulations 2018. The effect of the new definition of an AIF is that non-U.K. funds, including EEA UCITS, will be defined as AIFs.

II. Provision of information. The draft Regulations disapply the information and reporting requirements of U.K.'s National Private Placement Regime (NPPR) for funds that are recognized under FSMA for marketing to retail investors.

III. EEA AIFs marketed in the U.K. via a passport – temporary permissions. The draft Regulations introduce a TPR for EEA AIFs and AIFMs that have notified the FCA, prior to exit day, of their intention to market in the U.K. via a passport to continue to access the U.K. market for a limited period after exit day (the AIF TPR). After Brexit, EEA AIFs will be subject to the NPPR to access the U.K. market, unless they have already notified the FCA to begin marketing before exit day and have applied to enter the AIF TPR. The AIF TPR will extend for three years after exit day, with discretion for HM Treasury to extend the regime by increments of up to 12 months in specified circumstances. During the AIF TPR, AIFMs will be able to market relevant funds in the U.K. on the same terms and subject to the same conditions as they did before Brexit. This includes complying with duties previously imposed on them in relation to a host member state under the AIFMD, such as providing certain information to the FCA. Once the AIF TPR expires, an AIFM can only continue marketing relevant AIFs in the U.K. if they have made a notification under the NPPR. Relevant AIFMs will be directed to make notifications by the FCA within two years of exit day. The FCA has consulted separately on its proposed approach to a TPR for EEA firms and funds.

IV. EEA AIFMs currently marketing third-country AIFs. The draft Regulations will align the treatment of EEA AIFMs with that of other third-country AIFs by requiring them to notify under the AIFM Regulations. They will then be able to access the U.K. market through the NPPR. EEA AIFMs are eligible to enter the AIF TPR.

V. New EEA AIFs marketed in the U.K. after exit day. The draft Regulations provide that both EU and U.K. AIFMs wishing to market EEA AIFs in the U.K. after exit day will need to notify the FCA under the NPPR, as is required for the marketing of third-country AIFs.

VI. Reporting on portfolio companies and asset-stripping provisions. The AIFMD requires an EEA AIFM to report and make certain disclosures when it acquires control of an EU company and also imposes certain asset stripping restrictions on the AIFM within two years of it acquiring control. The draft Regulations will remove the EU element from these requirements, so that a U.K. AIFM will only be required to report on portfolio companies and comply with the restrictions on asset stripping when it acquires control of a U.K. company, as opposed to an EU company.

VII. Supervisory cooperation. The draft Regulations remove the AIFMD's requirements for U.K. regulators to share information with EU authorities.

HM Treasury intends to lay the draft Regulations before Parliament in the autumn. It is intended that the Regulations will enter into force on exit day in the event that there is a no-deal scenario.

The draft Regulations are available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746539/AIFM_Amendment_Regulations_8-10-18__for_publication_.pdf and the explanatory information is available at: https://www.gov.uk/government/publications/draft-eu-exit-sis-for-investment-funds-and-their-managers/the-alternative-investment-fund-managers-amendment-eu-exit-regulations-2018-explanatory-information.

Post-Brexit UK Law to Exclude EU Laws on the European Supervisory Authorities

On October 9, 2018, HM Treasury published guidance stating that the laws establishing the three European Supervisory Authorities and the European Systemic Risk Board will be revoked in their entirety once the U.K. has left the EU. The ESAs are ESMA, the European Banking Authority and the European Insurance and Occupational Pensions Authority. These ESAs and the ESRB are part of the EU framework for supervision and regulation of the EU financial services sector. The European Union (Withdrawal) Act 2018 automatically incorporates such EU legislation into U.K. laws when the U.K. leaves the EU.

At the point of Brexit, the ESAs and the ESRB will no longer perform functions in relation to the U.K. and the EU legislation that established them will be inoperable in U.K. laws. HM Treasury intends to use a statutory instrument to revoke those laws in their entirety so that they do not become applicable on Brexit. Where other EU legislation automatically incorporated into U.K. law refers to the ESAs or ESRB, statutory instruments will either amend the law or revoke it, as appropriate.

The guidance is available at: https://www.gov.uk/government/publications/regulations-relating-to-the-european-supervisory-authorities-and-the-european-systemic-risk-board/regulations-relating-to-the-european-supervisory-authorities-and-the-european-systemic-risk-board.

UK Plans Transitional Regime for Credit Ratings for Potential "No Deal" Brexit

On October 8, 2018, HM Treasury published explanatory guidance on a proposed U.K. regulation to onshore EU legislation on CRAs in the event of a "no deal" scenario resulting from the EU-U.K. Brexit negotiations. If no deal is reached, the U.K. exits the EU on March 29, 2019. The draft statutory instrument is still being prepared and the approach as set out in the guidance may change as a result. It is expected that the draft SI will be published and also laid before Parliament before the end of the year.

The EU Credit Rating Agencies Regulation regulates CRAs established in the EU. ESMA directly supervises EU CRAs registered with it under the CRA Regulation. The CRA Regulation provides that banks, investment firms, insurers, reinsurers, management companies, investment companies, AIFMs and CCPs may only use credit ratings for certain regulatory purposes if a rating is issued by: (i) an EU CRA registered with ESMA; (ii) a third-country CRA under the endorsement regime; or (iii) a third-country CRA under the equivalence/certification regime. Endorsement allows credit ratings issued by a third-country CRA to be used for regulatory purposes in the EU, provided that the rating has been endorsed by an EU CRA. The equivalence/certification regime allows credit ratings issued by a third-country CRA in relation to a third-country entity or financial instrument to be used in the EU for regulatory purposes. It does not cover ratings issued by a third-country CRA for an EU entity or a financial instrument issued in the EU.

The CRA Regulation will be brought into U.K. law under the European Union (Withdrawal) Act. HM Treasury is proposing to amend the CRA Regulation and existing U.K. legislation to ensure that U.K. CRAs can continue to operate and U.K. firms can continue to use credit ratings for regulatory purposes without interruption. The draft SI will transfer ESMA's powers and functions in relation to U.K. CRAs to the FCA from March 30, 2019 and grant additional powers and functions to the FCA so that it is able to effectively register and supervise CRAs.

The draft SI will establish a "conversion regime" under which CRAs that are already established in the U.K. will be able convert their registration with ESMA to an FCA registration. Third-country CRAs that are currently certified by ESMA will be able to extend their certification to the U.K. Each of these conversions will require a written notification to be given to the FCA.

A temporary registration regime will also be available for new legal entities established in the U.K. that are part of a group of CRAs with an existing ESMA registration on exit day. Firms that have submitted an application for registration to the FCA prior to exit day, and whose application is still to be determined, will enter the TPR. Other firms that wish to apply for registration as a U.K. CRA will need to submit an application to the FCA and will not be able to use the temporary registration regime.

HM Treasury will assume the European Commission's powers to make equivalence decisions. Existing equivalence decisions will be retained under the EU (Withdrawal) Act. The FCA will adopt existing ESMA decisions on the suitability of non-EU regulatory frameworks for CRAs.

Ratings issued by a U.K. CRA that is registered with the FCA, or by a third-country CRA under the endorsement or certification regime, will be permitted for regulated usage in the U.K. Where a rating has been issued before exit day in the EU by firms that register or apply for registration with the FCA, a transitional period of one year will allow firms to use credit ratings for regulatory purposes.

The explanatory guidance is available at: https://www.gov.uk/government/publications/draft-credit-rating-agencies-amendments-etc-eu-exit-regulations-2018/draft-credit-rating-agencies-amendments-etc-eu-exit-regulations-2018-explanatory-information.

Draft UK Post-Brexit Regulations to Onshore the EU Bank Recovery and Resolution Directive

On October 8, 2018, HM Treasury published draft Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 to onshore the EU Bank Recovery and Resolution Directive in preparation for the U.K.'s exit from the EU. An explanatory guide to the draft Regulations has also been published. The draft Regulations will make changes to the existing U.K. legislation which transposed the BRRD into U.K. law, which is mainly the Banking Act 2009 and the Bank Recovery and Resolution (No 2) Order 2014, and to certain Delegated Regulations adopted by the European Commission under the BRRD. The aim of the draft Regulations is to ensure that the U.K. Special Resolution Regime is "legally and practically workable on a standalone basis" when the U.K. leaves the EU.

The main function of the draft Regulations will be to bring EEA resolutions within the U.K.'s framework for recognition of third-country resolutions. The Banking Act 2009 provides the conditions that must be met for the BoE to refuse to recognize a third-country's resolution action. Those conditions will be amended such that references to the EEA are replaced with reference to the U.K. For example, the BoE will need to take into account whether the third-country's resolution action will affect the financial stability of the U.K. only and will no longer need to consider the effect on the financial stability of an EEA state. A transitional provision will cater for a situation where an EEA-led resolution is taking place at the time of Brexit by disapplying the third-country recognition framework in this situation. This transitional provision will apply where action is taken under an EEA state law (other than the U.K.) to apply a resolution tool, exercise a resolution power or enforce crisis management procedures, as provided for by BRRD. Other than in this situation, any EU27 resolution proceedings would only be recognized or supported in the U.K. under the existing provisions for third-country recognition and not as an automatic matter.

The draft Regulations also add a provision to the Bank Recovery and Resolution (No 2) Order 2014 on contractual recognition of bail-in. The U.K. has implemented the BRRD contractual recognition requirement through rules made by the PRA and the FCA. HM Treasury is proposing to give the BoE powers to make technical standards on requirements for contractual recognition of bail-in, which would include provisions on the liabilities to be excluded from the requirements and the content of the contractual term. The BoE, PRA and the FCA are expected to consult on changes to their rules affected by the draft Regulations before the end of the year, which will hopefully provide further details on when the contractual recognition of bail in will be required for contracts governed by laws other than U.K. law and whether any transitional period will be put in place. Without more, non-U.K. law governed contracts will in principle be required to include bail-in clauses recognizing U.K. bail-in and stay clauses recognizing U.K. stays, when such contracts create liabilities of in-scope U.K. firms that are party to such contracts.

HM Treasury intends to lay the draft Regulations before Parliament in the autumn, after which the Special Resolution Regime Code of Practice will be updated to further clarify the changes made by the draft Regulations to the U.K.'s SRR. The U.K. regulators will consult in due course on any changes that need to be made to their rules to remedy any deficiencies in the EU technical standards that will be retained in U.K. law.

The draft Regulations and the explanatory information are available at: https://www.gov.uk/government/publications/draft-bank-recovery-and-resolution-and-miscellaneous-provisions-amendment-eu-exit-regulations-2018?utm_source=674c54eb-4c1d-4cb9-9d06-556adb0e3539&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate.

UK Proposes Temporary Transitional Powers for UK Financial Regulators to Ease Brexit Adjustments

On October 8, 2018, HM Treasury published an Approach Paper setting out its proposal for a temporary transitional power to be given to the U.K. financial regulators to assist firms to adapt to the post-Brexit regulatory framework in an orderly manner in the event of a "no deal" scenario.

It is proposed that the BoE, PRA and FCA are granted a temporary power to award transitional relief from regulatory requirements where the requirements have been introduced or have changed as a result of onshoring financial services legislation. The power would relate to regulatory requirements in the PRA and FCA rules, onshored EU technical standards, onshored EU financial services regulations or delegated regulations and relevant U.K. primary or secondary legislation. The regulators would be able to grant transitional relief by issuing a "direction" setting out the terms of the relief, including whether the relief would apply to particular firms, classes of firms or to all firms. The power would not be available where a specific transitional arrangement has already been put in place for firms through regulations made under the European Union (Withdrawal) Act because HM Treasury believes that additional relief would not be necessary.

HM Treasury proposes that the power would be available to the U.K. financial regulators for two years from the day the U.K. leaves the EU. Any temporary relief granted using the transitional power would cease to have effect two years after Brexit.

The temporary power would only be available for the specific purpose of facilitating firms to adjust to onshoring changes and would not be a general power to waive or modify regulatory requirements for any other reason. In particular, the power would not apply to: (i) any provision setting the U.K.'s regulatory perimeter; (ii) the threshold conditions that all firms must meet; and (iii) any requirement that is not within the regulatory remit of the regulators.

The approach paper is available at: https://www.gov.uk/government/publications/proposal-for-a-temporary-transitional-power-to-be-exercised-by-uk-regulators?utm_source=0d2ba5e1-1ea5-4a70-8191-4c47b6fdf6ea&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate.

Draft UK Post-Brexit Legislation to Onshore Trade Repositories' Obligations Published

On October 5, 2018, HM Treasury published a draft of the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018, along with explanatory information. The draft Regulations are primarily relevant for trade repositories in both the U.K. and the EU that are currently registered with and supervised by ESMA and that are planning to continue servicing the U.K. market after the U.K.'s exit from the EU on March 29, 2019.

The draft Regulations have been prepared to ensure that the U.K.'s legal framework for reporting of derivatives trades to trade repositories will continue to operate effectively after exit day. The draft Regulations amend the version of the European Markets Infrastructure Regulation that will be retained on

Brexit. The draft Regulations transfer to the FCA the functions carried out by ESMA for the registration of trade repositories. They also establish: (i) a temporary registration regime that will enable U.K. and EU trade repositories that wish to establish a new U.K. legal entity to benefit—on complying with certain requirements—from temporary registration while the FCA considers their application; and (ii) a conversion regime that will allow U.K. trade repositories that are currently registered with ESMA to be registered as authorized U.K. trade repositories by the FCA from exit day.

HM Treasury intends to lay the draft Regulations before Parliament in the autumn. Further draft legislation on trade repository requirements and supervision of trade repositories is also expected to be published by HM Treasury later this year.

The draft Regulations are available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746257/Trade_Repositories__Amendmentand_Transitional_Provisions___EU_Exit__Regulations18.pdf and the explanatory information is available at: https://www.gov.uk/government/publications/draft-trade-repositories-amendment-and-transitional-provision-eu-exit-regulations-2018/trade-repositories-amendment-and-transitional-provision-eu-exit-regulations-2018-explanatory-information.

Corporate Governance

UK Financial Conduct Authority Consults on Guidance Under the Extended Senior Managers Regime

On October 11, 2018, the FCA published a consultation paper on proposed guidance on the Statement of Responsibilities (SoR) and Responsibilities Maps required under the Senior Managers and Certification regimes. The extended SM&CR will apply to all firms authorized under FSMA and regulated by the FCA, as well as EEA and third-country (non-EEA) branches. SM&CR will be extended to FCA solo-regulated firms from December 9, 2019.

All Senior Managers must have an SoR which sets out his/her roles and responsibilities. Enhanced firms (those whose size, complexity and potential impact on customers warrant further requirements) must have a Responsibilities Map. Core firms and limited scope firms do not need to have a Responsibilities Map. The proposed guidance provides some examples of good and bad practices, questions for firms to ask themselves as they prepare their documents and example Responsibilities Maps.

The proposed guidance is intended to provide practical guidance to firms that are authorized and regulated by the FCA only—solo-regulated firms. However, the FCA suggests that dual-regulated firms that are also subject to prudential supervision by the PRA may find the guidance useful. The final guidance will be non-binding and any departure from it will not be presumed by the FCA to be a breach of the FCA's rules.

The consultation closes on December 10, 2018. The FCA intends to publish its feedback before the end of this year.

The consultation paper is available at: https://www.fca.org.uk/publication/guidance-consultation/gc18-04.pdf and details of the FCA's policy statements on rule changes resulting from the extension of the SM&CR are available at: https://finreg.shearman.com/uk-conduct-regulator-issues-near-final-rules-on-e.

Derivatives

Securities and Exchange Commission Reopens Comment Period on Capital, Margin and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants

On October 11, 2018, the U.S. Securities and Exchange Commission voted to reopen the comment period and request additional comments on proposals for capital, margin and segregation requirements for security-based swap dealers (SBSDs) and major security-based swap participants (MSBSPs) and capital requirements for broker-dealers. The Commission approved the measure by a 4-1 vote, with only Commissioner Robert Jackson Jr. dissenting.

The Commission initially published in 2012 a proposal on capital and margin requirements for non-bank SBSDs and MSBSPs, and segregation requirements for all SBSDs. The Commission published proposed provisions to establish the cross-border treatment of these rules in 2013 and an additional capital requirement for nonbank SBSDs in 2014. By reopening the comment period, the Commission stated that it is looking to provide market participants with an opportunity to provide comments that account for regulatory and market developments since the initial publication of the proposals, as well as the potential economic effects of the proposals in light of such developments. The Commission has previously indicated that it intends to finalize these rules prior to commencing registration of SBSDs and MSBSPs.

The Commission highlighted several questions and potential modifications to the proposed rules on which it would like specific comment, including in connection with the capital, margin, segregation, substituted compliance, compliance dates and the economic implications of the proposals.

All comments must be received within 30 days of the release's publication in the Federal Register.

The Commission's release is available at: https://www.sec.gov/rules/proposed/2018/34-84409.pdf, the Commission's press release is available at: https://www.sec.gov/news/press-release/2018-233, Chairman Clayton's statement is available at: https://www.sec.gov/news/public-statement/statement-clayton-101118, Commissioner Peirce's statement is available at: https://www.sec.gov/news/public-statement/peirce-statement-open-meeting-101118, Commissioner Roisman's statement is available at: https://www.sec.gov/news/public-statement/statement-roisman-101118, Commissioner Stein's statement is available at: https://www.sec.gov/news/public-statement/statement-stein-101118 and Commissioner Jackson's statement is available at: https://www.sec.gov/news/public-statement/statement-jackson-101118.

FinTech

European Parliament Adopts Resolution on Distributed Ledger Technologies

On October 3, 2018, the European Parliament adopted a non-legislative resolution entitled "distributed ledger technologies and blockchains: building trust with disintermediation." Of particular relevance to the financial services sector, the European Parliament is requesting that the European Commission and other EU authorities take various steps to maximize the potential of this technology in the EU, including asking:

I. the European Commission and financial services authorities to monitor developing trends and use cases of DLT in the financial sector;

II. the Commission and the European Central Bank to assess the sources of volatility of cryptocurrencies, identify any harm presented to the public and consider whether cryptocurrencies could be incorporated into the European payment system;

III. the Commission and the European Data Protection Supervisor to provide further guidance on how DLT can comply with the EU legislation on data protection, and in particular, the General Data Protection Regulation;

IV. the Commission to work with international organizations to enhance the development of technical standards for smart contracts and to undertake an in-depth analysis of the existing legal framework in all member states on the enforceability of smart contracts;

V. the Commission to assess whether any potential barriers to use of smart contracts are proportionate, noting that legal certainty could be enhanced through coordination and mutual recognition between member states;

VI. the Commission to analyze whether a European passport for DLT-based projects could be introduced to enhance legal certainty for investors, users and individuals and promote financing to small- and medium-sized enterprises;

VII. the Commission to develop guidelines, standards and disclosure requirements for Initial Coin Offerings, including identifying the criteria for improving investor protection;

VIII. the Commission to consider the legal requirements that would allow ICOs to be used to boost funding for SME's; and

IX. the Commission to create an Observatory for Monitoring of ICOs and a database of their characteristics and taxonomy with a view to developing a model framework for regulatory sandboxes, including standards and a code of conduct.

The provisional text of the resolution is available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0373+0+DOC+PDF+V0//EN.

Financial Stability Board Recommends Vigilant Ongoing Monitoring of Crypto-Assets

On October 10, 2018, the Financial Stability Board published a report entitled "Crypto-asset markets: Potential Channels for future financial stability," in which it outlines its findings following its assessment of the crypto-asset markets in 2018.

The FSB has considered the primary risks present in crypto-assets markets as low liquidity, volatility, leverage risks, as well as technological and operational risks (including cyber security risks). The FSB considers that crypto-assets lack the key attributes of sovereign currencies and do not serve as a common means of payment, a stable store of value or a mainstream unit of account. Based on the available information, the FSB considers that crypto-assets do not pose a material risk to global financial stability at this time. However, the FSB's report highlights that there could be financial stability implications from these primary risks through a variety of transmission channels including: (i) confidence effects; (ii) financial institutions' exposures to crypto-assets, related financial products and entities that are financially impacted by crypto-assets; (iii) the level of market capitalization of crypto-assets; and (iv) the extent of their use for payments and settlements.

The FSB calls for vigilant monitoring of this rapidly developing area and its report includes details of the monitoring framework it has developed to track the evolution of crypto-assets markets over time.

The Report is available at: http://www.fsb.org/2018/10/crypto-asset-markets-potential-channels-for-future-financial-stability-implications/.

Funds

UK Conduct Regulator Consults on Illiquid Assets and Open-Ended Funds

On October 8, 2018, the FCA launched a consultation on illiquid assets and open-ended funds, following responses from stakeholders to a discussion paper it issued early in 2017. After observing the impact of certain temporary fund suspensions following the U.K.'s 2016 referendum on exiting the EU, the FCA considers that open ended funds investing in illiquid assets have a potential structural liquidity mismatch which, under stress, can create a "first mover" advantage that may lead to runs on funds and sales of fund assets at reduced prices.

The FCA is consulting on a number of proposals to alleviate the risk of poor outcomes to retail investors in open ended funds, specifically non-UCITS retail schemes (NURSs), that invest in illiquid assets. The

consultation includes a proposed approach to defining "inherently illiquid assets," examples of which include property or infrastructure investments.

In addition to the responses received to its discussion paper, the FCA's consultation proposals are also informed by its supervisory work and by the revised version of the Recommendations on Liquidity Risk Management for Collective Investment Schemes published in February 2018 by the International Organization of Securities Commissions.

In summary, the FCA proposes to amend the Collective Investment Schemes sourcebook of its Handbook with new rules and guidance on the following:

I. To reduce the risk of harm to certain groups of investors when fund managers apply pricing adjustments, the FCA proposes rule changes to: (a) require managers of NURSs holding immovables to suspend dealing when there is material uncertainty about at least 20% of the value of the scheme property; and (b) require managers of NURSs to suspend dealing when at least 20% of the value of the scheme property is invested into other funds which have been suspended due to material uncertainty.

II. To improve liquidity management, the FCA proposes to: (a) introduce new rules and guidance for NURSs on setting a fair and reasonable value for an immovable to achieve a rapid sale; (b) introduce new rules for funds investing in inherently illiquid assets (FIIAs) on improving contingency planning and new rules requiring depositaries of FIIAs to provide oversight of fund managers' liquidity management; and (c) set out new guidance on the use of liquidity buffers and suspensions.

III. To improve disclosure to make it less likely that consumers invest in funds which are not suitable for their needs, the FCA proposes to: (a) require FIIAs to improve prospectus disclosures and to add a warning "– a fund investing in inherently illiquid assets" in the final part of a fund's name in written communications to retail investors; and (b) require FIIAs and relevant intermediaries to include a risk warning in financial promotions that relate to FIIAs.

Responses to the consultation are invited by January 25, 2019. The FCA intends to publish a Policy Statement in 2019. The FCA expects the new rules and guidance to come into effect in 2020. The FCA also proposes to publish a related paper later in 2018, which will explore approaches and issues relating to so-called patient capital, where investors make long term investments, such as in infrastructure projects, with longer term horizons for investment returns.

The consultation paper (CP 18/27) is available at: https://www.fca.org.uk/publication/consultation/cp18-27.pdf, the Discussion Paper (DP 17/1) is available at: https://www.fca.org.uk/publication/discussion/dp17-01.pdf and details of IOSCO's Liquidity Risk Management Recommendations are available at: https://finreg.shearman.com/international-standards-body-issues-liquidity-ris.

Securities

European Supervisors Announce 2019 Work Priorities

On October 9, 2018, the Joint Committee of the European Supervisory Authorities published its 2019 Work Programme. EIOPA will Chair the Joint Committee in 2019. The Work Programme provides details of the Joint Committee's key workstreams for 2019.

The Joint Committee plans a range of outputs in the following areas:

I. Consumer protection and financial innovation. This includes: (a) planned technical advice and guidance on Packaged Retail Insurance-based Investment Products; (b) potential work on technical standards on the European Commission proposal for a Regulation on disclosures on sustainable investments; (c) input into the European Commission's FinTech Action Plan; (d) a Joint Report following assessment of the implementation, by the institutions in the securities, banking and insurance sectors, of complaints-handling guidelines published by each of the ESAs; and (e) recommendations on how national regulators may use behavioral finance findings for supervisory purposes, to strengthen consumer protection.

II. Cross-sectoral risk analysis and assessment. The Joint Committee will publish its semi-annual Joint Report on Risks and Vulnerabilities to financial stability.

III. Anti-money laundering/counter-terrorist financing. The Joint Committee will continue to provide a forum for consideration of emerging risks and sharing information and good practice and will focus mainly in 2019 on the implementation of aspects of the EU AML Roadmap. This includes: (a) updating Joint Guidelines on money-laundering and terrorist financing risk factors; (b) own-initiative Guidelines for enhancing collaboration and cooperation between national regulators; (c) review and update of existing guidelines and technical standards where necessary; and (d) developing an enhanced framework for cooperation between AML/CTF and prudential supervisors.

IV. Financial conglomerates. The Joint Committee will continue its work on the effective supplementary supervision of financial conglomerates, including publishing an updated list of identified financial conglomerates and continuing work on the development of technical standards for various reporting formats.

V. Securitization. The Joint Committee will work in 2019 on new mandates under the Securitization Regulation, which amend certain provisions of the European Market Infrastructure Regulation. It expects to deliver a range of outputs including Opinions, Joint Positions, Q&As, and reports and responses to the European Commission.

The 2019 Work Programme is available at: https://esas-joint-committee.europa.eu/Publications/JC%202018%2056%20%28Joint%20Committee%20Work%20Programme%202019%29.pdf.

UK Conduct Regulator Consults on Enforcement Powers Under the Securitization Regulation

On October 12, 2018, the FCA has published a further consultation on implementation of the EU Securitization Regulation. The Securitization Regulation and a related amendment to the Capital Requirements Regulation came into effect on January 17, 2018. The majority of the provisions of the Securitization Regulation and the related amendment to the CRR will apply directly across the EU from January 1, 2019. While the Securitization Regulation is directly applicable, HM Treasury must make certain legislative amendments to align provisions of U.K. law with the Regulation. The FCA must also align its Handbook and launched a first consultation in August 2018 on its proposals for Handbook amendments.

In this further consultation, the FCA is consulting on proposed amendments to its Decision Procedure and Penalties manual (DEPP) and to its Enforcement Guide, to reflect the expected provisions of a Statutory Instrument which is expected to be laid before Parliament by HM Treasury in December 2018.

It is expected that the SI will: (a) empower the FCA to address contraventions of the Securitization Regulation by authorized firms; (b) empower the FCA to sanction third-party verification agents ("TPVs") and unauthorized entities; (c) set out a procedure for authorizing TPVs and for cancelling and temporarily withdrawing their authorization; and (d) give the FCA additional powers relating to contraventions of the Securitization Regulation. The new powers include a power to impose temporary disciplinary prohibitions on individuals and a power to impose a temporary ban on simple, transparent and standardized notifications.

In the consultation, the FCA also proposes changes to its decision-making procedures in DEPP to reflect the provisions of the SI. Finally, it proposes to add a new section into its Enforcement Guide, setting out how it will exercise its powers against individuals, TPVs, authorized entities and unauthorized entities that are alleged to have contravened the Securitization Regulation.

The consultation proposals will affect entities wishing to act as TPVs, originators, sponsors, securitization special purpose entities, sellers of securitization positions and unauthorized entities participating in securitizations that are subject to the Securitization Regulation. The proposals also affect individuals holding offices or positions involving responsibility for taking management decisions at originators, sponsors or SSPEs.

Comments on the consultation are invited by November 2, 2018. The shorter than usual three-week consultation period is due to the proposed changes being either consequential or involving an extension of the FCA's existing approach. The short consultation will also enable the FCA to publish its planned Policy

Statement in December 2018. The changes to DEPP and EG will take effect in line with the commencement date that will be set for the SI.

The consultation (FCA CP 18/30) is available at: https://www.fca.org.uk/publications/consultation-papers/cp18-30-eu-securitisation-regulation-implementation-depp-and-eg and details of the FCA's August 2018 consultation are available at: https://finreg.shearman.com/uk-conduct-regulator-consults-on-rule-alignments-.

Upcoming Events

November 28-29, 2018: EBA 7th Annual Research Workshop - Reaping the benefits of an integrated EU banking market

Upcoming Consultation Deadlines

October 22, 2018: ISDA consultation on fall backs based on overnight risk-free rates for certain derivatives

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

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

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

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

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

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

November 1, 2018: PRA consultation, Regulatory transactions: Changes to notification and application forms

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

November 2, 2018: FCA consultation on enforcement powers under the Securitization Regulation

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

November 12, 2018: PRA consultation on overlapping Liquidity Reporting templates under new Pillar 2 framework

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

December 7, 2018: FCA consultation on the TPR for EEA firms and investment funds

December 7, 2018: FCA consultation on Brexit-Related Handbook Changes and Binding Technical Standards

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

January 25, 2019: FCA consultation on open-ended funds and illiquid assets

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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This memorandum 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.

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