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FINANCIAL REGULATORY DEVELOPMENTS FOCUS

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.

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

The latest Governance & Securities Law Focus is available here.

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Bank Prudential Regulation & Regulatory Capital

Two US Banking Regulators Propose Amendments to Supplementary Leverage Ratio Calculations for GSIBs and Their Insured Depository Institution Subsidiaries

On April 11, 2018, the U.S. Board of Governors of the Federal Reserve System and U.S. Office of the Comptroller of the Currency published a joint notice of proposed rulemaking and request for comment that would modify the calculation of the enhanced supplementary leverage ratio for U.S. global systemically important bank holding companies and certain of their insured depository institutions subsidiaries regulated by the Federal Reserve and OCC. The proposal would also make certain conforming changes to the Federal Reserve Board's total loss-absorbing capacity (TLAC) requirements. Under the current framework, in order to avoid constraints on distributions and certain discretionary bonus payments, covered institutions are required to maintain a supplementary leverage ratio of Tier 1 capital against an institution's total leverage exposure of at least three percent, plus an additional leverage buffer of two percent. The proposal retains the three percent minimum SLR requirement, but amends the buffer requirement from two percent to a percentage equal to 50 percent of an institution's GSIB surcharge, which had not been proposed at the time the original enhanced SLR rule was promulgated. The joint release notes that this recalibration will make the requirements serve more as a backstop, rather than a binding constraint, and may incentivize GSIBs to reduce their footprint or undertake more low-risk activities. The joint proposal highlights that this change will result in only a .04 percent ($400 million) reduction in the amount of Tier 1 capital currently held by GSIBs.

The proposal also seeks to modify the prompt corrective action framework for certain insured depository institution subsidiaries of GSIBs regulated by the Federal Reserve and OCC. Currently, insured depository institutions that are subsidiaries of GSIBs must maintain an SLR of 6 percent to be considered "well capitalized" under the PCA framework. The proposal would amend this standard to require an SLR of 3 percent plus 50 percent of the GSIB surcharge applicable to the depository institution's GSIB holding company. The proposal notes that this will lead to an estimated $121 billion reduction in Tier 1 capital among subsidiary insured depository institutions, as compared to the current requirement. The U.S. Federal Deposit Insurance Corporation did not join the Federal Reserve and OCC in issuing this notice. In a separate statement, FDIC Chairman Martin Gruenberg was critical of the proposed reduction, noting that "[s]trengthening leverage capital requirements for the largest, most systemically important banks in the United States was among the most important post-crisis reforms."

The proposal would also amend the Federal Reserve's TLAC rule to replace each GSIB's 2 percent TLAC leverage buffer with a buffer set to 50 percent of the firm's GSIB surcharge, and make certain other conforming changes to Federal Reserve Board rules. Comments on the proposal are due by May 21, 2018.

The full text of the proposed rule is available at:
https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180411a2.pdf?_sm_au_=iVVpJHbpFfNfr7D7.

US Federal Reserve Board Proposes to Integrate its Regulatory Capital and Stress Test Rules for Large Banks

On April 10, 2018, the Federal Reserve published a notice of proposed rulemaking and request for comment intended to integrate its capital and stress rules and thereby simplify the capital regime applicable to bank holding companies with $50 billion or more in total consolidated assets and to the U.S. intermediate holding companies of foreign banking organizations. Currently, the standardized approach imposes a static capital conservation buffer of 2.5% of risk-weighted assets. The proposal would replace that with a stress capital buffer equal to the decrease in common equity Tier 1 capital under the severely adverse stress testing scenario plus four quarters of common stock dividends (expressed as a percentage of risk-weighted assets).

The stress capital buffer for an institution, however, cannot be lower than 2.5 percent of an institution's risk-weighted assets. This buffer would apply in addition to the surcharge applicable to GSIB holding companies that are subject to the Federal Reserve's GSIB surcharge, and any applicable countercyclical capital buffer amount. The proposal is intended to streamline the existing regulatory capital regime and would result in a reduction of the total number of requirements applicable to the largest bank holding companies from 24 to 14, while maintaining the overarching objectives of stress testing and capital rules. Failure to maintain the minimums subjects a firm to restrictions on capital distributions and discretionary bonus payments.

The proposal would also create a stress leverage buffer requirement that would be based upon certain capital action assumptions currently used in the Comprehensive Capital Analysis and Review program's supervisory post-stress capital assessment. The proposal seeks to make a number of changes to the Federal Reserve Board's CCAR program itself, as well. This includes replacing the assumption that a firm will carry out all nine quarters of its planned capital actions, with a requirement that firms fund four quarters of common stock dividends; replacing an assumption that results in a firm's balance sheet growing under stress with one that requires that it remain constant; removing the 30 percent dividend ratio that has been used as a threshold for heightened supervisory scrutiny; and eliminating the quantitative objection (*i.e.*, under current rules the Federal Reserve may restrict capital distributions if a firm does not demonstrate an ability to maintain capital levels above minimums under stressful conditions). The proposal notes that had these amendments been in effect during the most recent CCAR exercises, and given the current capital levels of participating firms, no firm would have been required to raise additional capital to avoid limitations on capital distributions. In addition, Federal Reserve Board staff expects the changes to reduce the amount of capital required of non-GSIBs that are subject to CCAR and maintain, or slightly increase, the capital required for GSIBs. Comments on the proposal are due 60 days from the date the notice is published in the Federal Register.

The full text of the proposed rule is available at:
https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180410a2.pdf?_sm_au_=iVVpJHbpFfNfr7D7.

European Supervisory Authorities' Recommendations to Address Risks in EU Securities, Banking and Insurance Sectors

On April 12, 2018, the Joint Committee of the European Supervisory Authorities published a report on risks and vulnerabilities in the EU financial system. The ESAs are the European Securities and Markets Authority, the European Banking Authority and the European Insurance and Occupational Pensions Authority. The ESAs make recommendations for policy actions by the ESAs, national regulators and financial institutions. A summary of the risks and recommendations contained in the report is set out below.

- To combat cyber risks, the ESAs recommend that financial institutions should continue to improve IT systems, explore risks in the context of information security and take steps to resolve risks surrounding connectivity and outsourcing to third-party providers. The ESAs will continue to keep these risks under review. ESMA is launching a supervisory project on cloud computing outsourcing and will continue work to address supervisory convergence. The EBA is developing guidelines on the management of information and communication technology risks. EIOPA is conducting a qualitative exercise on cyber risk with national regulators and the industry.

- To address concerns relating to climate change, including the sustainability of investments across the financial sector and potential poor asset quality, the ESAs recommend that financial institutions should include sustainability risk in their governance and risk management frameworks and also develop sustainable financial products.

- Valuation risk and the potential for sudden risk premia reversals are risks that the ESAs consider should be tackled by the development and regular use of stress tests across all sectors. In addition to the existing stress test frameworks, ESMA is developing an approach to stress testing in the asset management industry and is also preparing guidelines for stress testing carried out by money market funds and guidelines for asset managers on liquidity stress testing in all funds.
- On the continued uncertainty around Brexit, the ESAs reiterate that financial institutions should continue to plan for the U.K.'s withdrawal from the EU, including by assessing contractual continuity and possible relocations.

The report is available at: https://esas-joint-committee.europa.eu/Publications/Reports/Joint%20Committee%20Risk%20Report.pdf.

EU Report on the Potential Procyclical Effects of the EU Regulatory Capital Framework

On April 9, 2018, the European Commission published a report on the effects of the EU regulatory capital framework on the economic cycle. The Capital Requirements Regulation requires the Commission to assess periodically whether risk-sensitive regulatory requirements contained in the CRR and the Capital Requirements Directive create unintended procyclical effects and to consider whether it would be appropriate to implement any remedies. The report is addressed to the European Parliament and the Council of the European Union and was prepared in cooperation with the EBA, the European Systemic Risk Board and Member States.

The Commission analyzed whether capital ratio requirements are procyclical and, if so, if they have an impact of the level of capital held by banks. The Commission has concluded that there is only weak evidence of any procyclical effects resulting from the requirements in CRR and CRD. The EU regulatory framework already provides various tools that deal with procyclical effects, such as the capital conservation buffer, the countercyclical capital buffer, the leverage ratio and risk weight adjustments for specific exposures. The Commission does not consider that any major changes to the EU framework are required at this time.

The report is available at: http://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-172-F1-EN-MAIN-PART-1.PDF.

UK Prudential Regulation Authority Publishes its 2018/19 Business Plan

On April 9, 2018, the Prudential Regulation Authority published its Business Plan for 2018/19 which sets out its strategic goals and workplan to deliver those goals. In summary, the PRA's strategic goals and workplan are:

- To have robust prudential standards in place. The PRA will be working to deliver the implementation of ring-fencing of core retail services from wholesale and investment banking. From January 1, 2019, U.K. banks with more than £25 billion of retail deposits must ring-fence their retail business from their investment banking business. The PRA will continue to work with the affected banks to ensure their timely compliance with the requirements and will begin to assess the effectiveness of the arrangements in place by examining firms' policies, governance and control arrangements.
- To adapt to changes in the external market and to hold firms and their management accountable for meeting the PRA's standards. The PRA will focus on (i) potential regulatory arbitrage; (ii) new firms seeking authorization to operate in the U.K.; (iii) firms seeking permission to undertake new business; (iv) changes to business structure as a result of regulation and Brexit; and (v) the challenges and opportunities presented by FinTech. The PRA will also finalize its policy on extending the Senior Managers & Certification Regime to insurers and will continue to evaluate firms' implementation of the regime.

- To ensure firms are properly capitalized and have sufficient liquidity. The PRA will assess the adequacy of capital and liquidity resources of banking firms and will finalize its groups policy, including the approach to double leverage. The PRA will also consider how and when the final Basel III requirements should be implemented in the U.K. in light of Brexit.
- To develop the supervision of operational resilience. The PRA will identify firms where an operational failure could have a significant impact on the real economy and consider the level of resilience that firms should be expected to demonstrate. In particular, the PRA will assess firms' cyber and operational resilience. The PRA will be publishing a paper on operational resilience to obtain feedback on their intended approach.
- To ensure that firms have credible recovery plans and take steps to improve firms' resolvability. The PRA will continue its work on implementing the EU minimum requirements for own funds and eligible liabilities (MREL) as well as its policy on operational continuity in resolution.
- To deliver its secondary competition objective. The PRA will continue its work to assess the competition implications of its policies and will implement an internal rating-based model applicable for smaller banks and refine the Pillar 2A capital framework.
- To deliver a smooth Brexit transition. The PRA intends to focus on how firms' legal structures might become more complex as a result of the U.K.'s withdrawal from the EU, in particular to ensure that it maintains appropriate visibility of overseas firms operating in the U.K. The PRA will also review its Rulebook to ensure that it remains operable for Brexit.

The PRA published a consultation paper on its fees and levies for 2018/19 alongside the Business Plan as well as a report to the Prudential Regulation Committee on the adequacy of PRA resources and independence of PRA functions.

The PRA's Business Plan is available at: https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/publication/pra-business-plan-2018-19.pdf, the consultation paper on fees and levies is available at: https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp718.pdf and the report is available at: https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/report/report-adequacy-of-pra-resources-and-independence-of-pra-functions-march-2018.pdf.

Compensation

European Banking Authority Reports on Compensation Trends in EU Credit Institutions and Investment Firms

On April 10, 2018, the EBA published a report entitled "Benchmarking of remuneration practices at the European Union level and data on high earners." The report sets out the EBA's analysis of the compensation data provided to it by national regulators for 2016, which the EBA has compared with data from 2015 and 2014. The CRD requires the EBA to benchmark remuneration trends in credit institutions and investment firms at EU level and to publish aggregated data on high earners earning EUR 1 million or more per financial year. National regulators are required to collect the relevant information from credit institutions and investment firms and to submit it to the EBA.

The analysis shows a slight decrease in 2016 in the number of high earners paid EUR 1 million or more. There was also a significant decrease in the number of identified staff subject to a cap on the ratio of fixed to variable compensation, although the EBA notes that this was due to a significant reduction by two banks of their numbers of identified staff. The EBA also notes that the supervisory framework for compensation

practices is still not sufficiently harmonized, with significant differences among Member States and among institutions in the application of deferral and payout in instruments.

The EBA will continue to benchmark compensation trends biennially. The next benchmarking exercise will take place in 2019 using 2017 and 2018 data. Data on high earners will continue to be published annually. The EBA also proposes to review the application of the current regulatory technical standards on identified staff.

The Report is available at: http://www.eba.europa.eu/documents/10180/2087449/EBA+Report+on+Benchmarking+of+Remuneration+and+High+Earners.pdf.

Competition

UK Consultation on Trustee Engagement With Investment Consultancy and Fiduciary Management

On April 12, 2018, the U.K. Competition and Markets Authority published a working paper seeking views on its initial analysis on trustee engagement with investment consultancy and fiduciary management service providers.

This is the fourth working paper in the CMA's Investment Consultants Market Investigation in which it is assessing the supply and acquisition of investment consultancy services and fiduciary management services. The working paper should be read alongside the Issues Statement on the investigation, published in September 2017. The intention to publish a series of working papers on aspects of the investigation was outlined in a progress report in February 2018. The first working paper, relating to information on fees and quality, was published on March 1, 2018. The second working paper, on asset manager product recommendations, was published on March 22, 2018. The third working paper was published on March 29, 2018 and covered competition issues that may arise when firms offer both investment consultancy and fiduciary management services.

This working paper builds on the CMA's second working paper, analyzing the information available to pension trustees on the fees and quality of investment consultants and fiduciary managers.

In the working paper the CMA sets out its analysis of the extent to which pension scheme trustees are able to assess the value for money of alternative service providers and act on the outcome of their assessment. The CMA uses four indicators to examine the level of engagement across different types of scheme: switching; tendering and/or switching; undertaking a formal review of fees and/or quality; and undertaking an external review of fees and/or quality.

The CMA's preliminary findings are that levels of engagement vary significantly across pension schemes, with Defined Contribution schemes and smaller schemes less likely to engage than other schemes. In addition, the time and costs involved in switching fiduciary management providers can be sizeable. These conclusions indicate a potential concern about the extent to which trustees can assess their current providers and, in fiduciary management, switch provider.

The CMA is considering potential remedies under three categories, namely: (i) measures which would provide trustees with better information on switching costs; (ii) measures to reduce switching costs; and (iii) measures to empower and incentivize trustee boards to enhance their engagement.

Feedback on the analysis presented in the working paper should be provided by April 26, 2018. The working paper will then be finalized and will form part of the CMA's provisional decision report on the investigation, which is scheduled to be published in July 2018.

The fourth working paper is available at: https://assets.publishing.service.gov.uk/media/5acf14c840f0b617df33584d/working-paper-trustee-engagement.pdf, details of the Issues Statement are available at: http://finreg.shearman.com/uk-competition-and-markets-authority-highlights-p, details of the working paper on information on fees and quality are available at: http://finreg.shearman.com/uk-competition-and-markets-authority-publishes-wo, details of the working paper on asset manager product recommendations are available at: http://finreg.shearman.com/uk-competition-and-markets-authority-publishes-se and details of the working paper on competition issues arising when firms offer both investment consultancy and fiduciary management services are available at: https://finreg.shearman.com/uk-authority-considers-competition-issues-arising.

Cyber Security

US Federal Financial Institutions Examination Council Issues Joint Statement Regarding Cyber Insurance

On April 11, 2018, the U.S. Federal Financial Institutions Examination Council members released a joint statement with respect to cyber insurance and its role in risk management. FFIEC members include the Federal Reserve, the OCC and the FDIC. The statement and corresponding press release note that the frequency, sophistication and severity of cybersecurity incidents are increasing. As a result, general insurance policies may not provide adequate coverage in the event of a cybersecurity event and cyber insurance options are increasing and evolving in response to these factors. The statement highlights that cyber insurance options vary greatly, and can be in the form of either a standalone policy or an endorsement to an existing insurance policy. The statement cautions, however, that cyber insurance should be viewed as a risk mitigation tool and not as an alternative to sound internal controls, policies and procedures to guard against cybersecurity events. The statement notes that institutions, in considering cyber insurance, should assess their existing cybersecurity risk framework to determine the potential impact and magnitude of residual risk. In weighing cost and benefits of cyber insurance, the statement suggests that institutions should consider involving multiple stakeholders in the decision-making process, perform adequate due diligence to fully understand available policies and coverage options and incorporate cyber insurance into their annual budgeting processes.

The full text of the FFIEC statement is available at: https://www.ffiec.gov/press/pdf/FFIEC%20Joint%20Statement%20Cyber%20Insurance%20FINAL.pdf.

European Central Bank Consults on Cyber Resilience Oversight Expectations for Eurozone Financial Market Infrastructures

On April 10, 2018, the European Central Bank launched a consultation on draft "cyber resilience oversight expectations" for financial market infrastructures.

The CROE use, as a basis, the Guidance on Cyber Resilience for Financial Market Infrastructures that was published jointly in June 2016 by the Committee on Payments and Market Infrastructures and the Board of the International Organization of Securities Commissions. FMIs were required to implement immediately that Guidance, which was supplemental to the Principles for Financial Market Infrastructures published in 2012 by IOSCO and the Committee on Payment and Settlement Systems. The PFMIs were adopted by the Governing Council of the ECB in June 2013. In developing the CROE, the ECB also took into account existing international guidance documents, in particular the Cyber Security Framework published by the U.S. National

Institute of Standards and Technology, the ISO/IEC 27002 good practice standard for information security, the COBIT 5 framework for the governance and management of enterprise IT, the Information Security Forum's Standard of Good Practice for Information Security and the FFIEC's Cybersecurity Assessment Tools.

The Guidance did not add additional standards beyond the PFMI, but instead provided supplementary detail on how FMIs should enhance their cyber-resilience capabilities in connection with principle 2 (governance), principle 3 (risk management framework), principle 8 (settlement finality), principle 17 (operational risk) and principle 20 (FMI links) of the PFMI. The supplemental detail in the Guidance is designed to account for the fact that, while cyber risk is a form of operational risk, it has particular characteristics that mean it can present challenges to a traditional operational risk framework. The Guidance accordingly sets out further cyber-specific guidance on five primary risk management categories and on three overarching components that should be addressed across an FMI's cyber resilience framework. The five primary risk categories are governance, identification, protection, detection and response and recovery. The overarching components are testing, situational awareness and learning and evolving.

The ECB has developed the CROE for three key purposes: (i) to provide those responsible for FMI oversight with clear expectations to assess and determine the cyber resilience maturity levels of the FMIs they supervise; (ii) to provide FMIs with detailed steps on how to operationalize the Guidance, ensuring they are able to foster improvements and enhance their cyber resilience over a sustained period of time; and (iii) to provide the basis for a meaningful discussion between the FMIs and their respective supervisors. The CROE set out a maturity model which provides supervisors and FMIs with a benchmark against which they can evaluate an FMI's current level of cyber resilience, measure progression and establish priority areas for improvement. Three levels of maturity are included, namely, baseline, intermediate and advanced. Regardless of the level of maturity they fall into, FMIs should engage in ongoing efforts to adapt, evolve and improve their cyber resilience maturity.

The CROE follow the Guidance in defining FMIs as systemically important payment systems, central securities depositaries, securities settlement systems, central counterparties and trade repositories. The ECB intends that the CROE will be applied by the Eurosystem for the oversight of all payment systems and also T2S, the European platform for securities settlement in central bank money. The ECB notes, however, that central banks and national regulators responsible for oversight of clearing and settlement systems (SSSs, CSDs and CCPs) in the Eurozone may also opt to use the CROE for those FMIs. The ECB also states that, given the interconnectedness of FMIs within the financial system, they should actively reach out to their participants and other relevant stakeholders to promote understanding and support of cyber resilience objectives and their implementation.

Responses to the consultation are requested, using the comments template provided, by June 5, 2018.

The consultation paper is available at: http://www.ecb.europa.eu/paym/pdf/cons/cyberresilience/cyber_resilience_oversight_expectations_for_FMIs.pdf, the press release and comments template are available at: http://www.ecb.europa.eu/press/pr/date/2018/html/ecb.pr180410.en.html, the CPMI-IOSCO Guidance on cyber resilience for FMIs is available at: https://www.bis.org/cpmi/publ/d146.pdf and the Principles for Financial Market Infrastructures are available at: https://www.bis.org/cpmi/publ/d101a.pdf.

Derivatives

Final Global Technical Guidance on Critical OTC Derivatives Data Published

On April 9, 2018, the Committee on Payments and Market Infrastructures and the Board of the International Organization of Securities Commissions published final Technical Guidance on the harmonization of critical OTC derivatives data reported to trade repositories. The Technical Guidance does not cover the Unique Transaction Identifier and Unique Product Identifier. The Financial Stability Board identified the development of a UTI, UPI and other key data elements as critical for a mechanism to produce and share global aggregated derivatives reporting data. The Technical Guidance sets out the definition, format and allowable values of critical elements that would facilitate consistent aggregation of reported data at global level. It does not specify which data elements must be reported because those requirements are set by the relevant authorities in each jurisdiction. The Guidance is for national authorities to use and it is not intended to function as a set of rules for market participants.

The Technical Guidance is available at: https://www.bis.org/cpmi/publ/d175.pdf.

Financial Market Infrastructure

International Standard Setters Publish Framework for Supervisory Stress Testing of Multiple CCPs

On April 10, 2018, the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions published a Framework for the supervisory stress testing of CCPs, following a joint consultation launched in June 2017. In April 2015 the CPMI and IOSCO were asked by the G20 to develop, in conjunction with the Financial Stability Board and the Basel Committee on Banking Supervision, a "CCP workplan" for identifying and addressing remaining gaps and potential financial stability risks related to CCPs that are systemic across multiple jurisdictions and for helping to enhance their resolvability.

As part of the CCP workplan, CPMI-IOSCO evaluated the stress-testing policies and practices of CCPs and identified that supervisors needed a stress testing framework that would enable them to better understand the macroprudential risks that could materialize were multiple CCPs to face a common stress event at the same time. The Framework provides a means for national supervisors to design and conduct supervisory stress tests to evaluate the broad, macro-level impact of such common stress events. The Framework uses the term "multi-CCP SSTs" to describe these stress tests. It is not intended that multi-CCP SSTs supersede internal stress testing conducted by CCPs or that multi-CCP SSTs be used to assess the resilience of individual CCPs.

The framework comprises six components representing the steps supervisors would be likely to need to take when designing and conducting a multi-CCP SST. The components are: (i) purpose and exercise specifications; (ii) governance arrangements; (iii) developing stress scenarios; (iv) data collection and protection; (v) aggregating results and developing analytical metrics; and (vi) use of results and disclosure. For each component, the Framework sets out the specific issues supervisors might consider when deciding how to implement that component. CMPI-IOSCO believe that multi-CCP SSTs will assist supervisors in understanding the scope and magnitude of interdependencies between markets, CCPs and other entities, such as participants, liquidity providers and custodians. These tests could also be useful in providing information on the potential impact of market shocks, for example, where multiple CCPs managing one or more defaults are liquidating similar or common assets.

The Framework is available at: https://www.bis.org/cpmi/publ/d176.pdf and the CCP workplan is available at: https://www.bis.org/cpmi/publ/d134b.pdf.

Financial Services

UK Financial Conduct Authority Publishes its 2018/19 Business Plan

On April 9, 2018, the Financial Conduct Authority published its Business Plan for 2018/19 which sets out its key priorities for the coming year. The FCA confirms that it will continue to focus on issues relating to the U.K.'s withdrawal from the EU by working with the Government, ensuring appropriate transition measures for EEA firms, working towards operational readiness and cooperating at international level.

The FCA divides the remainder of its priorities into cross-sector priorities and sector priorities. There are seven cross-sector priorities: firms' culture and governance; financial crime and anti-money laundering; data security, resilience and outsourcing; innovation, big data, technology and competition; treatment of existing customers; long-term savings, pensions and intergenerational differences; and high-cost credit.

There are seven sector priority areas: wholesale financial markets; investment management; retail lending; pensions and retirement income; retail investments; retail banking; and general insurance and protection. The FCA also published Sector Views for each of these sectors which provide an FCA view of how each sector was performing as of mid-2017.

Some of the key activities that the FCA will undertake are:

- finalizing the rules to extend the Senior Managers and Certification Regimes to all firms and establishing a public register;
- tackling money laundering and reviewing money laundering in capital markets;
- assessing operational resilience to cyber attacks and assessing the risks of outsourcing and third-party providers;
- publishing new crowdfunding rules;
- reviewing cryptocurrencies;
- publishing its approach to market integrity;
- publishing final rules and its approach to industry codes of conduct for unregulated markets;
- finalizing rule changes arising from the Asset Management Market Study; and
- working with HM Treasury to develop a new prudential regime for investment firms authorized under the revised Markets in Financial Instruments package.

The FCA also published a consultation paper on its fees and levies for 2018/19 alongside the Business Plan as well as a discussion paper on its approach to developing an ex post impact evaluation framework.

The FCA's Business Plan is available at: https://www.fca.org.uk/publication/business-plans/business-plan-2018-19.pdf, the consultation paper is available at: https://www.fca.org.uk/publication/consultation/cp18-10.pdf and the Sector Views are available at: https://www.fca.org.uk/publication/corporate/sector-views-2018.pdf.

UK Financial Conduct Authority Consults on Ex Post Impact Evaluation

On April 9, 2018, the FCA published a discussion paper on its proposed approach to using ex post impact evaluation to assess the impact of its work on consumers, firms and markets. The consultation paper sets out what the FCA means by ex post impact evaluation, why it is important to the FCA, the scope of ex post impact evaluations, how the FCA will select which work to evaluate, how such evaluations will be conducted

and the key challenges involved in ex post impact evaluations. The FCA is seeking feedback on its proposed approach. Responses to the discussion paper should be submitted by July 9, 2018.

The discussion paper is available at: https://www.fca.org.uk/publication/discussion/dp18-03.pdf.

MiFID II

European Securities and Markets Authority Seeks Clarity on the Ancillary Activity Exemption

On April 9, 2018, ESMA published a letter from its Chair, Steven Maijoor, to the European Commission seeking clarification on how to interpret the ancillary activity exemption under the revised Markets in Financial Instruments Directive.

MiFID II exempts non-financial entities that deal on own account, or provide investment services to clients, in commodity derivatives from having to obtain authorization as an investment firm under MiFID II provided that, among other things, this activity is ancillary to their main business. The provisions of MiFID II are supplemented by a Commission Delegated Regulation setting out the Regulatory Technical Standard on the criteria to establish when an activity is considered to be ancillary to the main business. The wording of both MiFID II and the RTS suggest that the tests for whether activity is ancillary should be carried out at the level of the entity's group. However, some drafting amendments that were introduced by the Commission have led to uncertainty as to whether the tests should be carried out at the level of the entity rather than at group level.

ESMA states that it would not be appropriate for it to address this uncertainty through its usual Questions and Answers and invites the Commission to provide further guidance on the interpretation and implementation of the ancillary activity criteria, in particular on the level at which the tests should be applied.

The ESMA letter is available at: https://www.esma.europa.eu/sites/default/files/library/esma70-154-5851_letter_to_vp_dombrovskis_on_ancillary_activity.pdf and the Commission Delegated Regulation (2017/592) is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0592&from=EN.

People

Director of US Office of Foreign Assets Control, John E. Smith, to Step Down

On April 12, 2018, the U.S. Department of the Treasury announced that John E. Smith will be stepping down as director of the U.S. Office of Foreign Assets Control in early May 2018. Mr. Smith's 11-year career with OFAC includes serving as Acting Director/Director of OFAC since February 2015, and previously serving as OFAC's Deputy Director and as an Associate Director. OFAC Deputy Director Andrea M. Gacki will serve as Acting Director upon Mr. Smith's departure.

The full text of the Treasury Department announcement is available at: https://home.treasury.gov/news/press-releases/sm0347.

Upcoming Events

April 24, 2018: ECB public hearing via telephone conference on its consultation on draft guides to ICAAP and ILAAP

April 25, 2018: EBA public hearing on draft EBA Guidelines on Management of Non-Performing and Forborne Exposures

May 31, 2018: Bank of England and Centre for Economic Policy Research conference on competition and regulation in financial markets

Upcoming Consultation Deadlines

April 25, 2018: FSB survey on legal barriers to OTC derivatives trade reporting

April 26, 2018: CMA consultation on trustee engagement with investment consultancy and fiduciary management

May 4, 2018: IOSCO consultation on conflicts of interest and associated conduct risks during the equity capital raising process

May 4, 2018: ECB consultation on draft guides to ICAAP and ILAAP

May 4, 2018: Basel Committee technical consultation on Pillar 3 disclosure requirements and the regulatory treatment of accounting provisions

May 6, 2018: IOSCO consultation on proposed recommendations for trading venues and their regulators when implementing, operating and monitoring volatility control mechanisms to preserve orderly trading

May 7, 2018: PRA consultation on governance and risk management for algorithmic trading

May 11, 2018: FCA survey of European Economic Area firms currently operating in the U.K. under a passport

May 16, 2018: PRA consultation on guidance on the eligibility of guarantees as unfunded credit protection for capital requirement purposes

May 21, 2018: Federal Reserve and OCC proposed amendments to supplementary leverage ratio calculations for GSIBs and their insured depository institution subsidiaries

May 23, 2018: European Commission's legislative proposals to address NPL build-up in the EU

May 23, 2018: European Commission's proposed Regulation on the law applicable to the third-party effects of assignments of claims

May 23, 2018: ESMA consultations on draft technical standards on the application for registration of a securitization repository and on draft advice to the European Commission on supervisory fees for securitization repositories

May 25, 2018: ESMA consultation on supplementary guidance on the CRA endorsement regime

May 25, 2018: Basel Committee consultation on revisions to Pillar 3 Framework

May 27, 2018: EBA consultation on extending the Joint Committee Guidelines on complaints-handling for the securities and banking sectors

May 28, 2018: ECB consultation on proposed guide to internal models

June 4, 2018: European Commission proposed EU covered bonds legislative package

June 5, 2018: HM Treasury consultation on cash and digital payments in the new economy

June 5, 2018: ECB consultation on cyber resilience oversight expectations for Eurozone FMIs

June 8, 2018: European Commission proposed amending Regulation on cross-border payments in the EU

June 8, 2018: PSR consultation on its review of PSR Directions made in 2015

June 8, 2018: EBA consultation on draft EBA Guidelines on Management of Non-Performing and Forborne Exposures

June 11, 2018: European Commission proposed amending Regulation on cross-border payments in the EU

June 20, 2018: FCA consultation on Model Driven Machine Executable Regulatory Reporting

June 20, 2018: Basel Committee consultation on revisions to minimum capital requirements for market risk

June 21, 2018: FCA consultation on its approach to supervision

June 21, 2018: FCA consultation on its approach to enforcement

June 28, 2018: FCA consultation on revising the Financial Crime Guide to include insider dealing and market manipulation

July 5, 2018: FCA consultation on improving disclosure by AFMs to their investors (part of the Asset Management Market Study)

July 9, 2018: FCA consultation on its approach to ex post impact evaluation

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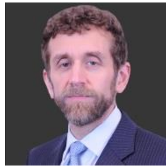

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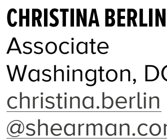

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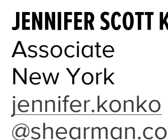

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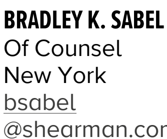

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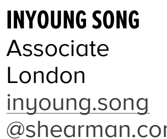

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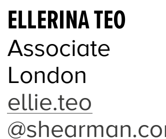

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