

**Financial Regulatory Developments Focus**

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

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## Bank Prudential Regulation & Regulatory Capital

### US Federal Reserve Board Announces Affirmation of Current Countercyclical Capital Buffer

On December 1, 2017, the US Board of Governors of the Federal Reserve System announced that it voted to maintain the countercyclical capital buffer at its current level of 0%. In coming to this decision, the Federal Reserve Board consulted with the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency, and followed the framework established in the Federal Reserve Board's corresponding policy statement. The countercyclical capital buffer is a tool that can increase financial system resiliency by providing financial institutions with a means to absorb higher losses in times of declining or fluctuating credit conditions.

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

<https://www.federalreserve.gov/newsevents/pressreleases/bcreg20171201a.htm>.

### US Senate Committee on Banking, Housing & Urban Affairs Holds Nomination Hearing of Jerome Powell

On November 28, 2017, the US Senate Committee on Banking, Housing & Urban Affairs held the nomination hearing of Jerome Powell to serve as Chair of the Federal Reserve Board. Governor Powell's written testimony briefly discussed his background and the Federal Reserve Board's policy goals of maximum employment and price stability. Governor Powell acknowledged the Federal Reserve Board's efforts to tailor regulation to a bank's size and risk profile but stressed, however, that balance must be maintained between easing of regulatory burdens and preserving core regulatory reforms. Senator Sherrod Brown and Mike Crapo each expressed some degree of support for Governor Powell. Senator Crapo spoke briefly about the regulatory burden on the financial industry, especially with regard to smaller community institutions, and referenced bipartisan legislation that has been introduced to alleviate some of these burdens. Senator Brown, on the other hand, cautioned against deregulation, and expressed concerns about the direction of financial regulation under the current Administration.

Governor Powell's written testimony is available at:

<https://www.federalreserve.gov/newsevents/testimony/powell20171128a.htm>, Senator Brown's opening statement is available at: <https://www.banking.senate.gov/public/index.cfm/democratic-press-releases?ID=EF5C332D-1F15-44CA-8CC0-3366749E6DD9> and Senator Crapo's opening statement is available at: <https://www.banking.senate.gov/public/index.cfm/republican-press-releases?ID=1A3E780F-E2B6-4D07-ADB8-C26C6EAE1CE6>.

### First Deputy Comptroller of the Currency Keith Noreika Discusses "Whether Bank Holding Companies Are Obsolete"

On November 28, 2017, Keith Noreika, First Deputy Comptroller of the Currency discussed whether bank holding companies are obsolete, a topic he described as both timely and complex. Mr. Noreika, newly relieved of his post as Acting Comptroller, contended that the correct question to be asking is whether bank holding companies are a universally sound practice for all banks, noting that they may inherently be more valuable for large, complex, institutions, as compared to smaller, more traditional banks. He suggested that many of the reasons why bank holding companies were established initially are no longer as large of a concern given the evolution of state and federal laws and regulation. Moreover, he contended that while operating a bank holding company results in very high compliance and regulatory costs, in many instances, the powers granted to banks have expanded, while those granted to bank holding companies have narrowed. Mr. Noreika also noted that while bank holding companies may be a tool for reducing systemic risk, they are not the only tool that can accomplish this end and presented alternatives to the bank holding company construct such as merging the holding company into the bank.

The transcript of Mr. Noreika's remarks is available at: <https://www.occ.treas.gov/news-issuances/speeches/2017/pub-speech-2017-142.pdf>.

### **Federal Reserve Bank of New York President William Dudley Discusses the Evolving Structure of the US Treasury Market**

On November 28, 2017, Federal Reserve Bank of New York President and CEO William Dudley delivered remarks to attendees of the Evolving Structure of the US Treasury Market: Third Annual Conference. President Dudley's remarks focused on the four priorities that were outlined in the Joint Staff Report on the Treasury flash event that occurred on October 15, 2014. These priorities include an increased need for collaboration between the public and private sectors with regard to Treasury market structure which will allow for a better understanding of the evolution of the Treasury market. The second priority discussed by President Dudley was increased data transparency regarding activities in the cash market which he argued will promote a robust and safe Treasury market, and allow for more timely response to issues that arise. A third, and related, priority raised by President Dudley is the market practices and risks associated with the Treasury market, noting that the opacity of the clearance and settlement practices can lead to information asymmetry and mispricing of risks. Finally, President Dudley discussed the importance of interagency monitoring of the Treasury market.

The transcript of President Dudley's remarks is available at:

<https://www.newyorkfed.org/newsevents/speeches/2017/dud171128>.

### **EU Makes Derogation for Own Funds Requirements for Certain Covered Bonds Permanent**

On November 25, 2017, a Commission Delegated Regulation amending the Capital Requirements Regulation was published in the Official Journal of the European Union. Under CRR, for banks investing in covered bonds that meet certain criteria, a preferential risk weight is applied. The amending Regulation makes permanent the derogation previously available to national regulators to waive the own funds requirement for certain covered bonds. The CRR sets a transitional date of December 31, 2017 for the waiver to be available.

The amending Regulation follows the European Banking Authority's recommendations on the EU covered bond framework published in 2014 and the European Commission's subsequent report on capital requirements for covered bonds published in 2015.

Although the amending Regulation makes the derogation permanent, a recital indicates that the derogation may be revoked as the EU considers how to revise the EU covered bonds framework. The EBA published its recommendations on revising the framework in December 2016, recommending, among other things, the introduction of an EU covered bond directive which would apply across different financial sectors and be based on the minimum harmonization principle and the enhancement of the conditions set out in the CRR for preferential risk weight treatment of banks' investments in covered bonds. This would include assessing the existing conditions on the eligibility of covered assets (which the EBA recommended should not be widened) and loan-to-value (LTV) limits for mortgage cover pools as well as establishing limits on substitution assets and a requirement on over collateralization.

The new waiver will apply from January 1, 2018.

The amending Regulation is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2188&from=EN>.

The EBA's 2016 recommendations are available at:

<http://www.eba.europa.eu/documents/10180/1699643/EBA+Report+on+Covered+Bonds+%28EBA-Op-2016-23%29.pdf>, the Commission's Report is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=COM:2015:509:FIN&from=EN> and the EBA's 2014 Report is available at:

<https://www.eba.europa.eu/documents/10180/534414/EBA+Report+on+EU+Covered+Bond+Frameworks+and+Capital+Treatment.pdf>.

### **European Banking Authority Repeals Guidelines on Retail Deposits Subject to Different Outflows for the Purpose of Liquidity Reporting**

On November 27, 2017, the EBA repealed these Guidelines, published in 2013, because they have been replaced by Implementing Technical Standards on supervisory reporting of institutions, as amended in the 2016 ITS on supervisory reporting by firms of the liquidity coverage requirement, which became effective in September 2016.

The EBA's announcement is available at: <http://www.eba.europa.eu/-/eba-formally-repeals-its-guidelines-on-retail-deposits-subject-to-different-outflows-for-the-purpose-of-liquidity-reporting>.

## **Brexit for Financial Services**

### **EU Proposed Regulation Moving the European Banking Authority to Paris Due to Brexit**

On November 29, 2017, the European Commission published a proposed Regulation to formalize the decision to move the EBA from London to Paris as a result of the decision by the UK to leave the EU. The proposed Regulation will apply from the date on which the European Union Treaties cease to apply to the UK or from March 30, 2019, whichever is earlier. The proposed Regulation only confirms the move and does not address any of the operational aspects.

Feedback on the proposed Regulation is possible until January 29, 2018.

The proposed Regulation is available at: <http://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-734-1-EN-MAIN-PART-1.PDF>.

## **Compensation**

### **US Department of Labor Extends Transition Period for Fiduciary Rule Exemption**

On November 29, 2017, the US Department of Labor issued a notice extending the transition period for the Best Interest Contract exemption, and other exemptions, from the prohibited transaction provisions of the Fiduciary Rule for an additional 18 months, from January 1, 2018 to July 1, 2019, in order to give the Department additional time to review the public comments received on the exemptions and to consider the impact of the exemptions on the market. In the interim, financial institutions and advisers subject to the Fiduciary Rule must continue to follow the Impartial Conduct Standards set forth in the BIC to the extent they receive forms of compensation that are otherwise prohibited by ERISA and the Code.

The text of the notice is available at: <https://www.gpo.gov/fdsys/pkg/FR-2017-11-29/pdf/2017-25760.pdf>.

## **Competition**

### **UK Financial Conduct Authority Alleges Breach of Competition Law by Four Asset Management Firms**

On November 29, 2017, the Financial Conduct Authority published a Statement of Objections issued to four asset management firms under the Competition Act 1998. Using its competition enforcement powers for the first time, the FCA alleges that Artemis Investment Management LLP, Hargreave Hale Ltd, Newton Investment Management Limited and River & Mercantile Asset Management LLP shared information by exchanging information concerning the price they intended to pay in relation to initial public offerings and a placing, shortly before the prices were set. The FCA's provisional view is that they have infringed competition law. The firms have the opportunity to respond to the allegations. Individuals that could materially assist in the FCA's assessment of the case may request a non-confidential version of the statement of objections from FCA by no later than January 12, 2018.

The FCA's Statement of Objections is available at: <https://www.fca.org.uk/news/press-releases/fca-issues-first-statement-objections-four-asset-management-firms>.

## Derivatives

### EU Moves to Remove Physically-Settled FX Forwards from Variation Margin Requirements

On November 24, 2017, the Joint Committee of the European Supervisory Authorities announced a review of the RTS under the European Market Infrastructure Regulation which include the requirement to exchange variation margin for physically-settled FX forwards.

EMIR requires counterparties to uncleared OTC derivative transactions to implement risk mitigation techniques to reduce counterparty credit risk. The RTS prescribe required margin amounts to be posted and collected and the methodologies by which the minimum amount of initial margin and variation margin should be calculated, as well as listing securities eligible as collateral, such as sovereign bonds, covered bonds, some securitization instruments, corporate bonds, gold and some equities. The variation margin requirements have applied to all counterparties since March 1, 2017 although they will only be applicable for physically-settled FX forwards from January 3, 2018.

Market participants have experienced difficulties in exchanging VM, in particular, in transactions with end-users. In addition, the EU's implementation of the international standards on margin exchange is more extensive than that in some other jurisdictions.

The Council of the European Union, in considering the Commission's proposals to amend EMIR, appears to agree with the ESAs. The Council is proposing to add a recital to EMIR to the effect that the requirement to exchange VM for physically-settled FX forwards should be limited to the most systemically important counterparties, so as to avoid differences between EU laws and international standards.

The ESAs note that amending the RTS will require the agreement of the European Commission, the European Parliament and the Council. The ESAs intend to submit proposed revisions to the RTS to the European Commission before the end of the year. In the meantime, the ESAs encourage national regulators to "apply their risk-based supervisory powers in their day-to-day enforcement of applicable legislation in a proportionate manner."

The Joint Committee of the ESAs comprises the European Securities and Markets Authority, the EBA and the European Insurance and Occupational Pensions Authority.

The ESA's announcement is available at: <https://esas-joint-committee.europa.eu/Pages/News/Variation-margin-exchange-for-physically-settled-FX-forwards-under-EMIR-.aspx>.

## Financial Market Infrastructure

### LIBOR Benchmark Confirmed Until 2021

On November 24, 2017, the FCA confirmed that the 20 panel banks for the LIBOR benchmark have agreed to support LIBOR until at least 2021. The announcement follows the statement by the FCA's Chief Executive, Andrew Bailey, earlier this year that the future of LIBOR could not be guaranteed because the underlying markets (the markets for unsecured wholesale term lending to banks) are no longer sufficiently active. Work around moving from LIBOR to alternative reference rates is underway. For example, the Bank of England announced in October this year that the implementation date for the reformed Sterling Overnight Index Average Interest Rate Benchmark, known as SONIA, would be April 18, 2018. The BoE took over as administrator of SONIA on April 25, 2018.

The FCA's statement is available at: <https://www.fca.org.uk/news/statements/fca-statement-libor-panels> and Andrew Bailey's speech is available at: <https://www.fca.org.uk/news/speeches/the-future-of-libor>.

## Financial Services

### European Commission Consults on Improving Supervisory Reporting

On December 1, 2017, following its 2015 Call for Evidence on the EU regulatory framework for financial services, the European Commission issued a report on progress on the targeted follow-up measures to the Call for Evidence, which was set out in a November 2016 Communication. Alongside the progress report, the European Commission has launched a consultation on supervisory reporting requirements. Some of the respondents to the Call for Evidence had highlighted overlaps and inconsistencies between reporting requirements in certain pieces of financial legislation, a reportedly excessive number of requirements, as well as, at times, insufficient clarity as to what needs to be reported and an insufficient use of international standards. Other respondents also highlighted the costs (including IT costs) of implementing reporting requirements and a number of respondents had mentioned that many EU Member States gold-plate the requirements.

The consultation seeks feedback in a number of areas, with the aim of gaining evidence on the cost of compliance with existing EU level supervisory reporting requirements, as well as on the consistency, coherence, effectiveness, efficiency, and added value of those requirements. The feedback from the consultation will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

Comments on the consultation are invited by February 28, 2018.

The consultation paper is available at: [https://ec.europa.eu/info/sites/info/files/2017-supervisory-reporting-requirements-consultation-document\\_en.pdf](https://ec.europa.eu/info/sites/info/files/2017-supervisory-reporting-requirements-consultation-document_en.pdf), the Progress Report on the Call for Evidence is available at: [https://ec.europa.eu/info/sites/info/files/171201-report-call-for-evidence\\_en.pdf](https://ec.europa.eu/info/sites/info/files/171201-report-call-for-evidence_en.pdf), the November 2016 Communication is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0855&from=EN> and the press release is available at: <http://europa.eu/rapid/midday-express-01-12-2017.htm?locale=en#4>.

## MiFID II

### Secondary EU Legislation Published on Criteria for Identifying a Liquid Market for Package Orders

On November 28, 2017, a Commission Delegated Regulation was published in the Official Journal of the European Union, on the criteria for identifying a liquid market for package orders under the Markets in Financial Instrument Regulation.

The Delegated Regulation sets out criteria for identifying package orders for which there is a liquid market as a whole and provides further asset-class specific criteria to be met where a package order consists exclusively of interest rate derivatives, equity derivatives, credit derivatives or commodity derivatives.

The Commission Delegated Regulation is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2194&from=EN>.

## Payment Services

### US Federal Reserve Board Vice Chairman for Supervision Randal Quarles Delivers Remarks on Prudent Innovation in the Payment System

On November 30, 2017, Vice Chairman for Supervision of the US Federal Reserve Board Randal Quarles provided remarks at the 2017 Financial Stability and Fintech Conference regarding innovation in the payments system. Vice Chairman Quarles noted that technological innovation has greatly changed our day-to-day lives, including in the financial services industry, but cautioned that utility and innovation need to be weighed against the potential ramifications that innovation has on the safety and soundness of the financial system. He noted that this tension is not

inherently negative, but that care should be taken to maintain stability and safety. Vice Chairman Quarles provided commentary on digital currencies, stating that it may be important to separate underlying technology, such as distributed ledger technology, from the overall concept of digital currency itself. He expressed concerns regarding the wide-spread use of digital currency in its current form, and further cautioned that central-bank-issued digital currency may not be a viable alternative, noting that the latter would require extensive review and consultation about legal and risk issues. However, he noted that research into digital currency issues, including for use as a settlement asset for wholesale payment systems should continue. In closing, Vice Chairman Quarles noted that prudent innovation may be the best course of action to balance the need for innovation with the need for stability.

The transcript of Vice Chairman Quarles's remarks is available at:

<https://www.federalreserve.gov/newsevents/speech/quarles20171130a.htm>.

### **European Commission Adopts Draft Technical Standards on Security Measures and Communication Tools for Payment Services**

On November 27, 2017, the European Commission adopted a draft Delegated Regulation setting out RTS on the security measures for strong customer authentication along with common and secure open standards for the communication between account servicing payment service providers, payment initiation service providers, account information service providers, payers, payees and other payment service providers in relation to the provision and use of payment services. The RTS require that, for strong customer authentication, there should be a combination of at least two independent elements, which could be a physical item—a card or mobile phone—combined with a password or a biometric feature, such as fingerprints, before making a payment. The RTS contain a number of exemptions from the requirements for strong customer authentication. There are two exemptions for remote payments, one on transaction-risk analysis and the other on low value payments (below EUR 30). The RTS also contain exemptions for proximity payments and a further exemption covering electronic payment transactions that are performed through dedicated payment processes or protocols typically used by corporates and where security is achieved through other means than the authentication of a particular individual. The Draft Delegated Regulation will be subject to a three-month scrutiny period by the European Parliament and the Council. Once adopted, it will be published in the Official Journal of the European Union. Banks and other payment service providers will then have 18 months to put the new security measures and communication tools in place. Subject to the agreement of the European Parliament and the Council, therefore, the RTS are expected to become applicable around September 2019.

The Draft Delegated Regulation is available at: <https://ec.europa.eu/transparency/regdoc/rep/3/2017/EN/C-2017-7782-F1-EN-MAIN-PART-1.PDF> and Annex I is available at: <https://ec.europa.eu/transparency/regdoc/rep/3/2017/EN/C-2017-7782-F1-EN-ANNEX-1-PART-1.PDF>.

### **UK Legislation Published on Payment Services and Electronic Money**

On November 30, 2017, the Payment Systems and Services and Electronic Money (Miscellaneous Amendments) Regulations 2017 were published and will enter into force in part on December 22, 2017 and in part on January 13, 2018.

The Regulations supplement the implementing legislation for the Settlement Finality Directive to extend its application to non-bank payment institutions as well as those entities to which the SFD applies. This will enable non-bank payment institutions to be treated as participants in designated payment systems, and consequently open up direct access to payment systems to non-bank payment institutions.

The Regulations also make minor amendments to the Payment Services Regulations 2017 and the Electronic Money Regulations 2011 to provide that, where an e-money firm or payment institution protects customer funds via an insurance policy, those insurance policies will be permitted to pay out into an existing safeguarding account rather than requiring a separate account.

The Regulations make further amendments to the Payment Services Regulations 2017 to align the regulatory treatment of registered account information services providers with that of payment institutions when making use of agents. The Regulations also insert a schedule to the Electronic Money Regulations 2011, to clarify the position for firms carrying on business within scope of the Electronic Money Directive between the UK and Gibraltar.

The Regulations also make other minor drafting and consequential amendments.

The Regulations (SI 2017 No. 1173) are available at: <http://www.legislation.gov.uk/ukxi/2017/1173/made> and the Explanatory Memorandum is available at: <http://www.legislation.gov.uk/ukxi/2017/1173/memorandum/contents>.

### **UK Legislation Published on Oversight of Systemically Important Payment Systems**

On November 29, 2017, the Banking Act 2009 (Service Providers to Payment Systems) Order 2017 was published and will enter into force in part on November 30, 2017 and in part on January 13, 2018.

Under the Banking Act 2009, the Bank of England already has oversight of payment systems recognized by HM Treasury, which allows the BoE to directly request information and assurance from the operators of the recognized payment systems and to impose regulatory requirements on the operators where necessary and appropriate. This newly published Order makes changes to Part 5 of the Banking Act 2009 to enable service providers to systemically important payment systems to be supervised by the BoE, where they are brought within the scope of the recognition order for a recognized payment system to which they provide services. This closes a gap in the BoE's oversight of payment systems.

The Order also makes further minor amendments to Part 5 of the Banking Act to include the Payment Systems Regulator in procedural provisions alongside other financial regulators and adds the PSR to the bodies to which the BoE is permitted to disclose information under the Bank of England Act 1998. Finally the Order makes consequential amendments to ensure that the effect of the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order is retained unchanged following amendments to the Banking Act 2009 made by the Digital Economy Act 2017.

The Order (SI 2017 No. 1167) is available at: <http://www.legislation.gov.uk/ukxi/2017/1167/made> and the Explanatory Memorandum is available at: <http://www.legislation.gov.uk/ukxi/2017/1167/memorandum/contents>.

## **Recovery & Resolution**

### **US Office of the Comptroller of the Currency Publishes Final Rule Regarding Mandatory Contractual Stay Requirements for Qualified Financial Contracts**

On November 29, 2017, the OCC published a final rule requiring all covered qualified financial contracts of covered banks to contain a contractual stay-and-transfer provision. This provision is similar to the stay-and-transfer provision that is statutorily required under Title II of the Dodd-Frank Act and the Federal Deposit Insurance Act. The OCC final rule also limits the exercise of default rights in the event of the insolvency of a covered bank's affiliate. In connection with these provisions, the final rule makes conforming changes to the OCC's capital adequacy standards and liquidity risk measurement standards. The Federal Register notice notes that the final rule is substantively identical to the provision adopted by the Federal Reserve Board and by the FDIC. The OCC final rule will take effect January 1, 2018.

The final rule is available at: <https://www.occ.treas.gov/news-issuances/federal-register/82fr56630.pdf>.

### **Financial Stability Board Proposes Guidance to Support G-SIB Resolution Planning**

On November 30, 2017, the Financial Stability Board launched a consultation on proposed guidance on two aspects of recovery and resolution of global systemically important banks. The first consultation proposes guidance on the principles of bail-in execution, and the second on the funding strategy elements of an implementable resolution plan.



Both of these proposals relate to the implementation of the FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions, published in 2011.

The first consultation on bail-in execution proposes a set of principles to assist resolution authorities developing bail-in resolution strategies and making resolution plans for G-SIBs operational. The FSB's Key Attributes provide for the bail-in powers that resolution authorities should have to carry out bail-in within a resolution and the Total Loss-absorbing Capacity standard sets the minimum requirements for the instruments and liabilities that should be available for bail-in. The FSB is proposing the new guidance because these omit operational aspects of executing bail-in and they consider that guidance is needed to address the challenges that have emerged in operationalizing bail-in. The operational aspects of bail-in require resolution authorities to have processes to: (i) identify the instruments and liabilities within the scope of bail-in; (ii) conduct valuations; (iii) develop a bail-in process that applies and complies with relevant securities and exchange laws; (iv) effect a transfer of the rights to new owners and obtain relevant regulatory approvals; and (v) communicate effectively with affected parties and the market. The proposed principles cover these six aspects of bail-in and identify actions that authorities should take to implement bail-in in a credible, timely, consistent and transparent manner. The proposed principles aim to take into account the implications of different approaches to bail-in by discussing particular challenges that may arise under the different approaches.

The second consultation paper proposes additional guidance for national regulators and resolution authorities on the development of an implementable resolution funding plan. The additional guidance, which will supplement existing guidance on liquidity risk management and resolution planning, proposes a set of key funding strategy elements covering: (i) the capability of a firm to support monitoring, reporting and estimating funding needs in resolution and to execute a funding strategy; (ii) the authority's development of a resolution funding plan; (iii) the firm's assets and private sources of funding and the mobilization of unencumbered assets as collateral; (iv) the identification of access to temporary public sector funding and operationalizing that access as well as strategies to exit such funding; and (v) information sharing and coordination between authorities, including the allocation of responsibilities between home and host authorities.

Responses to both proposals are requested by February 2, 2018.

The consultation paper on principles on bail-in execution is available at: <http://www.fsb.org/wp-content/uploads/P301117-1.pdf> and the consultation paper on funding strategy elements of an implementable resolution plan is available at: <http://www.fsb.org/wp-content/uploads/301117-2.pdf>.

## Securities

### European Central Bank Consults on a New Unsecured Overnight Interest Rate

On November 28, 2017, the European Central Bank launched a consultation on the high level features of a new unsecured overnight interest rate for euro transactions, following its announcement of its intention to develop a new interest rate benchmark on September 21, 2017. This new ECB rate will represent the euro unsecured money market in the very short tenor (i.e. overnight) and will be based entirely on transactions in euro that are reported by banks in accordance with the ECB's money market statistical reporting. It will complement existing benchmark rates produced by the private sector and serve as a backstop reference rate.

This consultation is the first consultation in a process which, over the next two years, will see the ECB defining precisely what the new rate intends to measure, developing the calculation methodology and testing the robustness of the rate. The ECB is seeking feedback on a number of aspects in the design of the rate, including on the proposed definition of the rate's underlying interest and the scope of the rate. The ECB also welcomes feedback on any other high-level features or issues which should be taken into account

Comments are invited by January 12, 2018. The ECB intends to produce the new rate by 2020.

The ECB consultation paper is available at:

[http://www.ecb.europa.eu/paym/pdf/cons/euoir/consultation\\_details\\_201711.pdf](http://www.ecb.europa.eu/paym/pdf/cons/euoir/consultation_details_201711.pdf).

## People

### **Marvin Goodfriend Nominated to Serve as Member of the Board of Governors of the Federal Reserve System**

On November 29, 2017, the Trump Administration announced that Marvin Goodfriend has been nominated as a Member of the Board of Governors of the Federal Reserve System. Dr. Goodfriend is nominated to fill the vacancy from the resignation of Sarah Bloom Raskin, and if confirmed, Dr. Goodfriend would serve a 14 year term.

The White House press release is available at: <https://www.whitehouse.gov/the-press-office/2017/11/29/two-nominations-sent-senate-today>.

### **Joseph M. Otting Takes Office as the 31st Comptroller of the Currency**

On November 27, 2017, Joseph Otting was sworn in by Secretary of the US Department of the Treasury Steve Mnuchin as the 31st Comptroller of the Currency. Comptroller Otting was previously confirmed by the US Senate on November 16, 2017. Comptroller Otting replaces Keith Noreika, who had been serving as Acting Comptroller of the Currency since May 2017.

The OCC press release is available at: <https://www.occ.treas.gov/news-issuances/news-releases/2017/nr-occ-2017-141.html>.

## Upcoming Events

January 16, 2018: EBA consultation on Pillar 2 draft Guidelines

January 22, 2018: EBA public hearing on draft RTS on the methods of prudential consolidation under the CRR

## Upcoming Consultation Deadlines

December 8, 2017: ECB consultation on proposed Guidance on quantitative supervisory expectations concerning the minimum levels of prudential provisions expected for non-performing exposures

December 19, 2017: EBA consultation on significant risk transfer in securitization

January 2, 2018: BoE consultation on its approach to setting internal MREL for groups.

January 2, 2018: Prudential Regulation Authority consultation on changes to the PRA's large exposures framework (CP 20/17).

January 2, 2018: EBA consultation on draft Implementing Standards on the provision of information for the purpose of resolution plans.

January 4, 2018: PRA consultation on Groups policy and double leverage (CP 19/17).

January 12, 2018: PSR consultation (CP17/2) on authorized push payment scams

January 15, 2018: ESMA consultation on proposed Guidelines on the position calculation under EMIR

January 16, 2018: European Commission legislative proposals for enhanced powers for European Supervisory Authorities and the European Systemic Risk Board

January 25, 2018: ESMA consultation on amendments to Systematic Internalisers' quote rules under RTS 1 of MiFID II

January 26, 2018: UK Banking Standards Board consultation considering what good banking outcomes look like for consumers.

January 29, 2018: European Commission proposed Regulation moving the EBA to Paris due to Brexit

January 29, 2018: European Commission legislative proposals for enhanced powers for the ESAs and the European Systemic Risk Board

January 31, 2018: EBA consultation on Pillar 2 draft Guidelines

February 2, 2018: BoE consultation on the procedure for the Enforcement Decision Making Committee

February 2, 2018: FSB consultations on proposed guidance on principles of bail-in execution and on the funding strategy elements of an implementable resolution plan

February 5, 2018: FCA consultation: Industry Codes of Conduct and Discussion Paper on FCA Principle 5

February 9, 2018: EBA consultation on draft RTS on the methods of prudential consolidation under the CRR

February 15, 2018: Comments due on the Federal Reserve's proposed guidance on supervisory expectations for boards of directors and its proposed new rating system for large financial institutions

February 28, 2018: European Commission consultation on supervisory reporting requirements

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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