



## Financial Regulatory Developments Focus

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

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## Bank Prudential Regulation & Regulatory Capital

### US Banking Agencies Issue Interagency Guidance on Funds Transfer Pricing Related to Funding and Contingent Liquidity Risks

On March 1, 2016, the US Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System issued interagency guidance on funds transfer pricing (FTP) practices related to funding risk and contingent liquidity risk for large financial institutions (i.e., domestic institutions with \$250 billion or more in assets and foreign institutions with \$250 billion or more in US assets). The interagency guidance describes four overarching principles that banks should use to develop, implement and maintain an effective FTP framework: (i) allocate FTP costs and benefits on funding risk and contingent liquidity risk; (ii) have a consistent and transparent FTP framework for identifying and allocating FTP costs and benefits on a timely basis and at a sufficiently granular level, commensurate with the firm's size, complexity, business activities and overall risk profile; (iii) have a robust FTP governance structure including the production of a report on FTP and oversight from a senior management group and central management function; and (iv) align business incentives with risk management and strategic objectives by incorporating FTP costs and benefits into product pricing, business metrics and new product approval. The guidance notes that an institution's FTP framework should be adequately tailored to its size, complexity, business activities and overall risk profile.

The interagency guidance is available at: <https://www.fdic.gov/news/news/financial/2016/fil16012a.pdf>.

### US Board of Governors of the Federal Reserve Re-Proposes Single Counterparty Credit Limits for Large US Bank Holding Companies and Foreign Banking Organizations

On March 4, 2016, the US Board of Governors of the Federal Reserve System re-proposed rules that would establish single counterparty credit limits for domestic and foreign bank holding companies, as well as US intermediate holding companies, with \$50 billion or more in total consolidated assets. The Federal Reserve also released a quantitative impact study that sets out the conceptual and quantitative foundations for the tighter limits on exposures between systemically important financial institutions.

The proposed rule implements section 165(e) of the Dodd-Frank Act which authorizes the Federal Reserve to establish limits on the amount of credit exposure that large domestic banking organizations, foreign banking organizations and US intermediate holding companies (covered institutions) can have to a single unaffiliated counterparty in order to limit the risks in the event of a failure at any such individual firm. The proposed rule builds on earlier proposals for single counterparty credit limits for domestic and foreign banking organizations issued by the Federal Reserve in December 2011 and December 2012 and the Basel Committee on Banking Supervision's 2014 large exposures framework. The proposed rule would impose stringent limits on a firm's exposure to a single unaffiliated counterparty including: (i) covered institutions with between \$50 and \$250 billion in total consolidated assets and less than \$10 billion in on-balance sheet foreign exposures would face a limit on aggregate net credit exposure to any one counterparty of 25% of total capital stock and surplus; (ii) covered institutions with \$250 billion or more in total consolidated assets or \$10 billion or more in on-balance-sheet foreign exposures would face a limit on aggregate net credit exposure to any one counterparty of 25% of the company's tier 1 capital; and (iii) covered institutions that are domestic G-SIBs as well as US IHCs and the combined US operations of foreign FBOs with total consolidated assets of \$500 billion or more would be prohibited from having aggregate net credit exposure to (a) another "major counterparty" (defined as a G-SIB or nonbank financial company supervised by the Federal Reserve) in excess of 15% of its tier 1 capital and (b) any other counterparty in excess of 25% of its tier 1 capital. Comments on the proposed rule are due by June 3, 2016.

The proposed rule is available at: <http://www.federalreserve.gov/aboutthefed/boardmeetings/sccl-fr-notice-20160304.pdf>.

The quantitative impact study is available at: <http://www.federalreserve.gov/aboutthefed/boardmeetings/sccl-paper-20160304.pdf>.

### US Banking Agencies Issue Volcker Rule FAQ to Clarify Capital Treatment of Qualifying TruPS CDO

On March 4, 2016, the US Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Securities and Exchange Commission and Commodity Futures Trading Commission (VR Agencies) issued a Frequently Asked Question (FAQ) to clarify the capital treatment of certain collateralized debt

obligations backed by trust preferred securities (TruPS CDOs). Specifically, the FAQ clarified that a banking entity is not required to deduct from its tier 1 capital a qualifying TruPS CDO that is retained under section 248.16(a) of the January 2014 interim final rule published by the VR Agencies. The January 2014 interim final rule provides an exemption that would permit a banking entity to retain an interest in, or act as sponsor of, a covered fund that issues TruPS CDOs subject to certain requirements, including that the issuer must have been established prior to May 19, 2010, and the banking entity's interest must have been acquired on or before December 10, 2013. However, a banking entity would be required to deduct from tier 1 capital its interests in qualifying TruPS CDOs when it acts as a market maker for the interests of such TruPS CDOs and investments in TruPS CDOs that are covered funds but are otherwise not qualifying TruPS CDOs.

The FAQ is available at: <http://www.federalreserve.gov/bankinfo/volcker-rule/faq.htm#21>.

### **US Office of Financial Research Publishes Working Paper on the Impact of Counterparty Defaults on the Banking System**

On March 8, 2016, the US Office of Financial Research (OFR) published a working paper using data on the credit default swap (CDS) market to assess the impact of a counterparty default on banks and the financial system as a whole. Using data from the Depository Trust & Clearing Corporation, the paper applies the supervisory scenarios of the Federal Reserve's Comprehensive Capital Analysis and Review (CCAR) to CDS markets as a proxy for banks' trading books. The working paper finds that the indirect effects of the default of a bank's largest counterparty on the bank's other counterparties are more significant than the impact on the bank itself. Moreover, the paper finds that, when looking at the financial system as a whole, banks may realize greater losses from the failure of a counterparty shared by the industry when compared to losses from the failure of the individual bank's largest counterparty. The report concludes that CCAR does not take into account the losses that occur to other counterparties of a banking organization as a result of the default of its largest counterparty, nor does it take into account the large counterparty exposures that exist for the core financial system as a whole.

The working paper is available at: [https://financialresearch.gov/working-papers/files/OFRwp-2016-01\\_Stressed-to-the-Core.pdf](https://financialresearch.gov/working-papers/files/OFRwp-2016-01_Stressed-to-the-Core.pdf).

### **US Office of the Comptroller of the Currency Proposes Reducing Regulatory Burden**

On March 14, 2016, the US Office of the Comptroller issued a notice of proposed rulemaking that would remove outdated or unnecessary provisions of certain OCC rules to reduce the regulatory burden on national banks and federal savings associations subject to the rules. The proposed rulemaking is part of the OCC's review of its rules required by the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) every ten years. The proposed rule was developed following outreach to the industry conducted by the OCC individually and in connection with other US banking regulators. The proposed rule would make the following changes to OCC rules, among others: remove notice and approval requirements for certain changes in permanent capital involving national banks; remove certain financial disclosure requirements for national banks and remove certain unnecessary regulatory reporting, accounting and management policy requirements for federal savings associations. The proposed rule is open for comment for 60 days.

The proposed rule is available at: <http://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-27a.pdf>.

### **European Banking Authority Publishes Annual Assessment of EU Supervisory Colleges**

On March 1, 2016, the European Banking Authority published its report on the functioning of supervisory colleges in 2015. The report sets out the EBA's annual assessment of how well the supervisory colleges have met the action plan for 2015. The EU supervisory colleges make joint decisions on capital, liquidity and recovery plans for EU cross-border banking groups. The EBA considers that, generally, there were significant improvements, particularly when it came to the reorganization of supervisory colleges following the introduction of the Single Supervisory Mechanism in 2014, the frequency of interaction and the quality of supervisory colleges. However, the EBA notes that some areas still require work, such as the joint decision processes, quality of joint decision documents and requests for individual recovery plans outside the joint decision process. The report also includes the EBA's action plan for supervisory colleges in 2016. The plan sets out the focus areas for supervisory colleges which are: on-

going balance sheet cleaning, reduction of non-performing loans for legacy portfolios, the sustainability of banks' business models, conduct risk and IT risk.

The EBA's Report is available at:

<http://www.eba.europa.eu/documents/10180/1390624/Report+on+the+functioning+of+supervisory+colleges+in+2015.pdf>.

### **Amendments to EU Technical Standards on Supervisory Reporting Published**

On March 5, 2016, Commission Implementing Regulation was published in the Official Journal of the European Union, which amends the Implementing Technical Standards on supervisory reporting by providing for additional monitoring metrics for liquidity reporting. Under the Capital Requirements Regulation, banks are subject to liquidity reporting requirements. To increase effective liquidity supervision, the amended ITS provide for additional monitoring metrics to enhance regulator's view of a bank's liquidity position, proportionate to the nature, scale and complexity of the bank's activities. Additional monitoring metrics to be reported now include those metrics based on the concentration of funding by counterparty and product type and metrics based on the concentration of counterbalancing capacity by issuer or counterparty. In addition, the frequency of reporting can be reduced, depending on the nature of the bank. The amended ITS enters into force on March 25, 2016.

The Regulation is available at: [http://eur-lex.europa.eu/legal-](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.060.01.0005.01.ENG&toc=OJ:L:2016:060:TOC)

[content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.060.01.0005.01.ENG&toc=OJ:L:2016:060:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.060.01.0005.01.ENG&toc=OJ:L:2016:060:TOC).

### **European Banking Authority Consults on Proposed Amendments to Technical Standards on Supervisory Reporting**

On March 4, 2016, the EBA launched a consultation on proposed amendments to the Implementing Technical Standards on supervisory reporting to incorporate the new requirements for prudent valuation reporting and supplementary requirements for reporting of credit risk information. Under the Capital Requirements Regulation, firms are subject to requirements on prudent valuation adjustments of fair-valued positions. The Regulatory Technical Standards on prudent valuation came into force on February 16, 2016 and cover the methodology for calculating Additional Valuation Adjustments, consideration to be given to available market data and the simplified and core approaches for the determination of AVA. According to the EBA, the entry into force of the RTS justifies more detailed reporting requirements for prudent valuation than have been required to date. In addition, the EBA is proposing that firms report credit risk on a total level as well as on a country level only. Responses to the consultation are due by March 30, 2016.

The EBA consultation paper is available at: <http://www.eba.europa.eu/documents/10180/1393810/EBA-CP-2016-02+%28Consultation+Paper+on+changes+to+ITS+on+reporting%29.pdf>, the ITS on supervisory reporting is available at:

[https://www.eba.europa.eu/documents/10180/1028653/ITS+on+Supervisory+reporting.pdf/9212b4e7-37a1-4bbf-8409-](https://www.eba.europa.eu/documents/10180/1028653/ITS+on+Supervisory+reporting.pdf/9212b4e7-37a1-4bbf-8409-2cc450d8513e)

[2cc450d8513e](https://www.eba.europa.eu/documents/10180/1028653/ITS+on+Supervisory+reporting.pdf/9212b4e7-37a1-4bbf-8409-2cc450d8513e) and the RTS on prudent valuation is available at: [http://eur-lex.europa.eu/legal-](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.021.01.0054.01.ENG&toc=OJ:L:2016:021:TOC)

### **EU Standards on Supervisory Reporting Requirements for the Liquidity Coverage Ratio Published**

On March 10, 2016, Commission Implementing Regulation was published in the Official Journal of the European Union, which amends the Implementing Technical Standards on supervisory reporting by providing for significant changes to the existing Liquidity Coverage Ratio reporting requirements under the Capital Requirements Regulation. The amending ITS introduce the templates and a large number of new data items necessary following the LCR requirements being implemented for credit institutions in January 2015. The European Banking Authority published its final draft amending ITS in June 2015. The changes include new templates and instructions for banks on capturing and reporting all necessary LCR items. The new templates cover liquid assets, outflows, inflows, collateral swaps and calculation of the LCR. The new instructions will only apply to banks; investment firms will continue to use current instructions and templates, at least for now. The amended ITS on supervisory reporting will apply from September 10, 2016.

The amending ITS is available at: [http://eur-lex.europa.eu/legal-](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.064.01.0001.01.ENG&toc=OJ:L:2016:064:TOC)

[content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.064.01.0001.01.ENG&toc=OJ:L:2016:064:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.064.01.0001.01.ENG&toc=OJ:L:2016:064:TOC).

### European Banking Authority Proposes Amendments to the EU Standards on Supervisory Reporting

On March 8, 2016, the European Banking Authority published final draft Implementing Technical Standards to amend the ITS on supervisory reporting under the Capital Requirements Regulation. The amending ITS make changes to the reporting templates and instructions in Annexes I to VII and IX of the ITS on supervisory reporting which cover financial reporting, solvency (own funds requirements), large exposures and losses resulting from lending collateralized by immovable property. Given the scope of the changes, the EBA is proposing to replace entirely the affected annexes. The EBA considers that the amendments are necessary to align the ITS with the answers in the Single Rulebook Q&As, to correct legal references and a few clerical errors. There has been no public consultation on the proposed changes. The amending ITS will need to be approved by the European Commission, European Parliament and Council of the European Union before they can come into effect. The EBA expects that the amendments will be applicable from the December 31, 2016 reporting reference date.

The amending ITS is available at: <http://www.eba.europa.eu/documents/10180/1396324/EBA-+ITS-2016-03+%28Final+draft+ITS+amending+Regulation+on+Supervisory+Reporting.pdf>.

The revised annexes and the annexes in tracked changes are available at: <http://www.eba.europa.eu/-/eba-issues-amended-standards-on-supervisory-reporting-for-institutions>.

### Bank of England on EU Membership and its Statutory Objectives

On March 7, 2016, an open letter from Mark Carney, Governor, Bank of England, to Andrew Tyrie, Chairman, Treasury Select Committee, on the effect of UK's EU membership on the BoE's statutory objectives was published. The letter was in response to the Committee's request for comment on the recent settlement agreement between the UK and the EU. The letter summarizes the findings that were made in a BoE report and the possible future impact of the settlement agreement. The BoE's primary objectives are monetary and financial stability. The three main areas in which the BoE's objectives are currently effected by EU membership are: (i) it provides dynamism in the UK economy through increased economic and financial openness; (ii) it increases the UK's exposure to economic and financial shocks from other nations, in particular the EU; and (iii) the BoE is required to implement EU law, regulations and directives in its regulations and policy instruments. Mr. Carney concludes that the settlement agreement provides a number of protections and additional tools that would protect the BoE's ability to achieve its statutory objectives. Implementation of the settlement agreement, through changes to various EU regulations and directives, is proposed to take place only if the outcome of the UK referendum on EU membership (so called "Brexit") is a vote to remain. The referendum is scheduled for June 23, 2016.

The letter is available at:

<http://www.bankofengland.co.uk/publications/Documents/other/treasurycommittee/other/governorletter070316.pdf>, the settlement agreement is available at: [http://www.consilium.europa.eu/en/meetings/european-council/2016/02/euco-conclusions\\_pdf](http://www.consilium.europa.eu/en/meetings/european-council/2016/02/euco-conclusions_pdf) and the report is available at: <http://www.bankofengland.co.uk/publications/Documents/speeches/2015/euboe211015.pdf>.

### Basel Committee on Banking Supervision Proposes New Approach to Operational Risk

On March 4, 2016, the Basel Committee on Banking Supervision published proposals to revise the standards for operational risk for internationally active banks. The Basel Committee consulted in 2014 on a revised Standardized Approach to operational risk and simultaneously undertook a review of the Advanced Measurement Approach for operational risk. The Basel Committee is proposing to replace the AMA from the Basel framework as well as the three existing Standardized Approaches with a Standardized Measurement Approach.

The new SMA is not based on any modelling and would set a standardized approach for measuring operational risk for regulatory capital purposes which would include risk sensitivity by using a bank's financial statement information and its internal loss experience. The Basel Committee introduced the AMA for operational risk in 2006 as part of the Basel II framework. The AMA allows regulatory capital to be estimated using a range of internal modelling practices subject to approval by the bank's regulator.

Comments on the proposals are due by June 3, 2016. The Basel Committee intends to provide further details on the timeline for withdrawal of the AMA and implementation of the SMA during the course of 2016.

The consultation paper is available at: <http://www.bis.org/bcbs/publ/d355.pdf>.

### **Basel Committee on Banking Supervision Launches Proposals for a Revised Pillar 3 Disclosure Framework**

On March 11, 2016, the Basel Committee on Banking Supervision launched a proposed consolidated and enhanced framework for Pillar 3 disclosures under Basel III. The Basel Committee announced in June 2014 that it was undertaking a review of Pillar 3. In January, it issued its revised Pillar 3 disclosure requirements, completing the first phase of the review. The Basel Committee is now consulting on the second phase of the review which includes:

1. Enhancements to the revised Pillar 3 framework, including: (i) key regulatory metrics to provide an overview of a bank's prudential position; (ii) proposals that banks disclose hypothetical risk-weighted assets calculated according to the standardized approaches for market risk, counterparty credit risk and the securitization framework, which requirements would be subject to finalization of the ongoing review of the standardized approach and the capital floor (a second consultation paper for credit risk was published on December 10, 2015); and (iii) a new disclosure requirement for prudent valuation adjustments.
2. Further revisions to the framework arising from recent developments, including: (i) proposed disclosure requirements arising from the total loss-absorbing capacity regime for global systemically important banks; (ii) proposed revisions to operational risk (about which the Basel Committee issued a separate consultation paper on March 4, 2016); and (iii) the revised standard on market risk (which was issued on January 14, 2016).
3. Consolidation of all Basel Committee disclosure requirements into the Pillar 3 framework which will include existing and prospective disclosure requirements.

Responses to the consultation are due by June 10, 2016.

The consultation paper on Pillar 3 is available at: <http://www.bis.org/bcbs/publ/d356.pdf>.

The second consultation paper on credit risk is available at: <http://www.bis.org/bcbs/publ/d347.pdf>.

The consultation paper on operational risk is available at: <http://www.bis.org/bcbs/publ/d355.pdf>.

The revised standards for market risk are available at: <http://www.bis.org/bcbs/publ/d352.pdf>.

The TLAC term sheet is available at: <http://www.fsb.org/wp-content/uploads/TLAC-Principles-and-Term-Sheet-for-publication-final.pdf>.

## **Bank Structural Reform**

### **UK Regulators Finalize Approach to Ring-fencing Transfer Schemes**

On March 4, 2016, the Prudential Regulation Authority published its Policy Statement on feedback to its consultation on the PRA's approach to ring-fencing transfer schemes together with the PRA's final Statement of Policy. The Financial Services (Banking Reform) Act 2013 introduced requirements for UK banking groups that have more than £25 billion of core deposits to ring-fence the entity/ies that accept deposits—called ring-fenced bodies. To assist firms subject to the ring-fencing requirements and restructure their business, provisions were made for transfer of businesses by a RFTS.

The PRA's Policy Statement sets out the regulator's responses to questions raised during the consultation, including on the certificate as to financial resources of the transferee, new bank authorizations, alternative group arrangements and immunity of the skilled person. The PRA's Statement of Policy sets out its approach to RFTS, noting that the PRA expects firms to nominate a skilled person to prepare the scheme report which nomination would be subject to the PRA's approval. The Financial Conduct

Authority published finalized guidance on its approach to the implementation of the ring-fencing requirements and RFTS. The ring-fencing regime is due to come into effect on January 1, 2019.

The PRA Policy Statement is available at: <http://www.bankofengland.co.uk/pradocuments/publications/ps/2016/ps1016.pdf>, the PRA Statement of Policy is available at: <http://www.bankofengland.co.uk/pradocuments/publications/sop/2016/rftssop.pdf> and the FCA Guidance is available at: <http://www.fca.org.uk/static/documents/fg16-1.pdf>.

## Conduct & Culture

### UK Banking Standards Board Publishes First Annual Review Report

On March 8, 2016, the Banking Standards Board published its first annual review report. The BSB was launched in April 2015 to help raise standards of behavior and competence in the banking sector. The report discusses the assessment exercise that the BSB ran during 2015 with 10 banks on how each firm was performing against its objectives on behavior, competence and culture. The BSB aims to gather information collected from the assessment and create an evidence-based picture of concerns and developments at industry and individual firm level. It is intended that the 2016 exercise will be more comprehensive and will be scaled up to include a wider number of member firms. The 2016 assessment will also include quantitative factors to help firms benchmark themselves against their peer firms.

The report is available at: <http://www.bankingstandardsboard.org.uk/wp-content/uploads/2016/03/BSB-Annual-Review-20152016.pdf>.

## Competition

### UK Competition and Markets Authority Proposes Further Remedies in Retail Banking Market Investigation

The Competition and Markets Authority has extended the timetable for its investigation into the retail banking market to August 12, 2016 and published for consultation revised proposals to remedy the adverse effects on competition identified in its provisional report. The CMA's report was originally scheduled for publication in February 2016. The provisional report, published in October 2015, identified several competition issues in the Personal Current Accounts and Small and Medium-sized Enterprises banking market, including: (i) a lack of transparency making comparison of different providers difficult; (ii) due to (i) and the perception that it is burdensome / the lack of confidence in switching services, small numbers of customers switching to different bank accounts; (iii) new banks and new products not attracting new customers, leading to the established banks having incumbency advantages; and (iv) high numbers of SMEs holding their business accounts in the same banks as their PCAs, with low levels of switching. The CMA also noted the general disadvantage faced by SMEs in terms of limited choice compared to larger customers. Following that report, the CMA proposed certain remedies, including (i) requiring banks to prompt customers to review the service they receive by receiving individual messages at certain "trigger points;" (ii) encouraging consumers and businesses to compare bank products by using Midata, an industry online tool, that allows consumers to easily access their banking data and compare it with other services; and (iii) creating a price comparison service for SMEs. Feedback to the initial consultation on the proposed remedies was that they would not sufficiently redress the adverse effects on competition. The revised remedy proposals seek to address those weaknesses. Feedback on the revised proposals are due by March 21, 2016.

The revised remedy proposals are available at: [https://assets.digital.cabinet-office.gov.uk/media/56dd1b1140f0b6037900000a/Supplemental\\_notice\\_of\\_possible\\_remedies\\_March\\_2016.pdf](https://assets.digital.cabinet-office.gov.uk/media/56dd1b1140f0b6037900000a/Supplemental_notice_of_possible_remedies_March_2016.pdf) and the revised timetable is available at: [https://assets.digital.cabinet-office.gov.uk/media/56d9bcc8ed915d0376000006/Retail\\_banking\\_market\\_investigation\\_case\\_timetable\\_-\\_7-3-16.pdf](https://assets.digital.cabinet-office.gov.uk/media/56d9bcc8ed915d0376000006/Retail_banking_market_investigation_case_timetable_-_7-3-16.pdf).

## Consumer Protection

### UK Regulator Issues Consultation Paper on Risk-Based Levies for the Financial Services Compensation Scheme Deposit Class

On March 4, 2016, the PRA published a consultation paper proposing amendments to the Depositor Protection Part of the PRA Rulebook and a new Statement of Policy in relation to the Financial Services Compensation Scheme and the calculation of firm



contributions to the Scheme. The consultation is relevant to UK banks, building societies, credit unions, overseas firms with PRA deposit-taking permission and the FSCS (UK's administrator of its Deposit Guarantee Scheme). Current PRA rules require the FSCS to calculate firm levies on the basis of covered deposits. The recast Deposit Guarantee Schemes Directive provides that contributions to a deposit guarantee scheme should also be adjusted relative to the risk incurred by each member of the scheme. The European Banking Authority issued Guidelines detailing methods for calculating contributions to schemes. In response to the EBA Guidelines, the PRA has set out, in appendices to the consultation paper, the methodology for calculating risk-based levies and their application to the repayment of current and future compensations costs incurred by the FSCS. The methodology uses different calculations depending on the category of firm: Capital Requirements Regulated firm, Credit Unions and Non-European Economic Area branches. The consultation closes on June 3, 2016.

The consultation paper is available at: <http://www.bankofengland.co.uk/pradocuments/publications/cp/2016/cp716.pdf> and the EBA Guidelines are available at: <https://www.eba.europa.eu/documents/10180/1089322/EBA-GL-2015-10+GL+on+methods+for+calculating+contributions+to+DGS.pdf/fa336fb5-7264-4381-9eee-cb2144b489e9>.

## Corporate Governance

### UK Regulators Remove Certain Rules under Senior Manager and Certification Regimes

On March 2, 2016, the PRA and the FCA published final rules removing certain requirements under the Senior Manager and Certification Regimes. The regulators consulted earlier this year on the proposed amendments which are necessary as a result of the proposed changes to the regime that have been proposed by the UK Government, including extending the regime to all financial services firms, removing the obligation on a firm to notify the PRA or FCA when it knows or suspects that a senior manager or certified person has failed to comply with the conduct rules and replacing the presumption of responsibility with a duty of responsibility. It remains to be seen whether Parliament will approve the equivalent changes that have been proposed by the Government to legislation. An amending Order, published in December 2015, stops the above-mentioned notification requirement and the presumption of responsibility from coming into force on March 7, 2016—the date when the remainder of the new Regime will come into effect. The regulators' rules and forms have been amended to reflect this position. The PRA has also made changes to the definition of 'significant risk taker' which sets the parameters of its Certification Regime. The amendment aims to align the definition of SRT with a 'material risk taker' under the Remuneration rules.

The FCA Policy Statement and final rules are available at: <http://www.fca.org.uk/static/documents/policy-statements/ps16-06.pdf> and the PRA Policy Statement and final rules are available at: <http://www.bankofengland.co.uk/pradocuments/publications/ps/2016/ps916.pdf>.

## Cyber Security

### US Comptroller of the Currency Discusses Cross-Border Cooperation and De-Risking

On March 7, 2016, US Comptroller of the Currency Thomas Curry discussed the importance of international cooperation and comprehensive cross-agency, cross-border approaches to cybersecurity and the fight to prevent money laundering. Comptroller Curry also addressed the issue of risk re-evaluation, commonly known as de-risking, which involves banks evaluating the BSA/AML risks posed by their customers and foreign correspondent banks. He noted that while these relationships may pose legitimate risks, there may be important reasons to preserve such relationships, a decision that the OCC does not dictate but leaves to the banks. Comptroller Curry noted that the OCC is in the process of gathering information through the supervisory process as to how banks conduct re-evaluation, including how they implement policies and procedures for evaluating customer risks, whether banks have policies on risk re-evaluation and how decisions to terminate such relationships are made and reviewed. He noted that the OCC may issue guidance upon completing this review.

Comptroller Curry's speech is available at: <http://www.occ.gov/news-issuances/speeches/2016/pub-speech-2016-25.pdf>.

## Derivatives

### European Securities and Markets Authority Final Report on Possible Systemic Risk and Cost Implications of CCP Interoperability Arrangements

On March 1, 2016, the European Securities and Markets Authority published a final report setting out possible systematic risk and cost implications of interoperability arrangements between central counterparties. The report focuses on the complexities of interoperable arrangements and the adequacy of risk management systems and models of CCPs. Interoperability arrangements, as defined in the European Markets Infrastructure Regulation, are arrangements between two or more CCPs which involve a cross-system execution of transactions. The Report details the general EU regulatory framework applicable to interoperability arrangements, as set out in the European Market Infrastructure Regulation, and related Guidelines and recommendations. The report provides a summary of interoperability arrangements for different products between EU CCP's, in relation to products such as EU equities, EU government bonds and EU Exchange Traded Derivatives. The report identifies the main new risk as that arising between the two CCPs which are interoperating, but notes that some EU CCPs have set up mechanisms to mitigate the risks of under-collateralisation, including when reuse of collateral is permitted. The Report is to be submitted to the European Commission and European Parliament. It will contribute to the report that the European Commission is responsible for submitting on the potential risks of interoperability.

The press release and report are available at: <https://www.esma.europa.eu/press-news/esma-news/esma-issues-report-risks-and-costs-ccp-interoperability>.

### European Commission Adopts Legislation for Mandatory Clearing Obligation for Credit Derivatives

On March 1, 2016, the European Commission announced that it had adopted a Delegated Regulation on the clearing obligation for credit derivatives. Under the European Market Infrastructure Regulation, the European Securities and Market Authority is required to develop draft Regulatory Technical Standards setting out the categories of OTC derivatives that should be subject to the clearing obligation, the date/s from which the obligation should apply and the minimum remaining maturity of OTC derivatives. ESMA provided its final draft RTS for the mandatory clearing of CDS to the European Commission in February 2015. The Delegated Regulation, which does not substantively change the ESMA RTS, provides for untranching iTraxx Index CDS (Main, EUR,5Y) and untranching iTraxx Index CDS (Crossover, EUR,5Y) derivatives to be subject to the clearing obligation. The obligation will be phased in according to counterparty type to allow market participants time to determine whether the obligation applies to them and set up procedures to ensure compliance, in a similar way as was done for interest rate swaps. Counterparty classifications are established for these purposes, which are also the same as those set for the clearing obligation for interest rate swaps. The exact dates for when the clearing obligation will come into effect will be determined by the date of publication of the Delegated Regulation in the Official Journal of the European Union.

The Delegated Regulation is available at: <https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-1165-EN-F1-1.PDF> and the annex to the Delegated Regulation is available at: <https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-1165-EN-F1-1-ANNEX-1.PDF>.

You may like to view our client note on interest rate swap clearing obligation for further information:

<http://www.shearman.com/~media/Files/NewsInsights/Publications/2015/12/U-Clearing-Obligation-for-Interest-Rate-Swaps-Set-for-June-2016-FIAFR-12.pdf>.

### Final Regulatory Technical Standards on Margin for Uncleared Derivatives

On March 8, 2016, the European Supervisory Authorities published final draft regulatory technical standards on risk-mitigation techniques, including details on specific operational procedures, for OTC-derivative contracts not cleared by a Central Counterparty. Under the European Market Infrastructure Regulation, counterparties to uncleared OTC derivative transactions are required to implement risk mitigation techniques to reduce counterparty credit risk. These draft RTS prescribe the regulatory margin amounts to be posted and collected and the methodologies by which the minimum amount of initial margin and variation

margin should be calculated. The draft RTS outlines a broad list of securities eligible as collateral for the exchange of margins, such as sovereign securities, covered bonds, specific securitisations, corporate bonds, gold and equities. The criteria for eligible securities include diversification of collateral and the removal of wrong-way risk. The draft RTS also provides procedures relating to the treatment of intragroup derivative contracts by counterparties, including delayed implementation of the requirements for intra-group agreements with counterparties in “non-equivalent” jurisdictions. There will also be an exemption for transactions with non-financial counterparties below the clearing threshold, wherever in the world they are located. The requirements for initial margin will be phased in annually over four years from September 1, 2016, initially for the largest counterparties, those counterparties who have or belong to groups, each of which that has an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 3 trillion. The aggregate average notional amount for applicable counterparties will then decrease by EUR .75 trillion for the next three years: 2.25 trillion, 1.5 trillion and then .75 trillion. Finally, after four years from the date of entry into force, the requirements will apply to any counterparty belonging to a group whose aggregate average notional amount of non-centrally cleared derivatives exceeds EUR 8 billion. The requirements for variation margin will be binding upon major market participants from September 1, 2016, with all other counterparties from March 1, 2017.

The draft final RTS is available at:

<http://www.eba.europa.eu/documents/10180/1398349/RTS+on+Risk+Mitigation+Techniques+for+OTC+contracts+%28JC-2016-+18%29.pdf>.

## Enforcement

### Financial Conduct Authority Bans Trader for LIBOR-Related Misconduct Based on US Criminal Conviction

On February 29, 2016, the FCA issued a final notice against Michael Rose Curtler prohibiting him from performing any function in relation to any regulated activity carried on by a UK authorized firm. This final notice arose as a result of Mr. Curtler’s conduct in allegedly manipulating or attempting to manipulate the USD London Interbank Offer Rate. When assessing an approved person’s fitness and propriety to carry out a controlled function in a regulated firm, the FCA has regard to a person’s honesty and integrity. On October 8, 2015, Mr. Curtler pleaded guilty before the United States District Court for the Southern District of New York to a single count of conspiracy to commit wire fraud and bank fraud. The FCA deemed that Mr. Curtler’s criminal conviction demonstrated a lack of integrity and a level of dishonesty which was further worsened by the fact that he knew what he was doing was wrong.

The final notice is available at: <http://www.fca.org.uk/static/documents/final-notices/michael-ross-curtler.pdf>.

### Upper Tribunal Decision Published on Whether a Third Party was Identified in a UK Regulator’s Notice

On March 4, 2016, a decision of Upper Tribunal Tax and Chancery Chamber on whether a Decision Notice issued by the FCA prejudicially identified a third party was published. On April 23, 2015, the FCA issued Deutsche Bank AG with a Decision Notice (preceded by a Warning Notice and then subsequently a Final Notice) notifying the bank of the FCA’s decision to impose on it a financial penalty of £226,000 as a result of serious misconduct. The finding of misconduct related to attempted manipulation of two benchmark interest rates. The Applicant, Mr. Vogt, was employed by the bank as a money market trader during the time of the alleged misconduct. The Applicant argued that the contents of the Decision Notice (and other relevant notices) prejudicially identified him. As the Applicant had not seen the Decision Notice, he based his complaint on the contents of the Final Notice, assuming it was materially the same as the Decision Notice. The Applicant maintained that, in breach of its obligations under the Financial Services Markets Act, the FCA had failed to provide him with a copy of the Decision Notice at the time of issuance and prior to its publication. FSMA provides certain rights to third parties in relation to Warning and Decision Notices given to another person by the FCA. The FCA took the view that the Applicant was not identifiable from the Final Notice. In dismissing the application and deciding that the Applicant had not been prejudicially identified in the Final Notice, the Upper Tribunal found that the contents of the Final Notice and other material would not lead a person professionally acquainted with Applicant to conclude that Mr. Vogt was the third party identified in the Final Notice. This follows the Upper Tribunal’s recent decisions in *Christopher Ashton v FCA*; *Christian Bittar v FCA*; and the Court of Appeal’s judgment in *Achilles Macris v FCA*.

The Upper Tribunal's decision is available at: <http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Vogt-v-FCA.pdf>.

You may like to view our client note, "Identification of Third Parties in FCA Notices" which is available at:

<http://www.shearman.com/~media/Files/NewsInsights/Publications/2016/01/Identification-of-Third-Parties-in-FCA-Notices-FIA-012615.pdf>.

### **Financial Conduct Authority Bans Former Trader from UK Financial Services Industry**

On March 8, 2016, the FCA published a final notice that it had banned Gary Harold Arthur Fincher from the UK financial services industry. Mr. Fincher was convicted on, September 25, 2014 and April 9, 2015 of a total of 28 counts relating to criminal offenses of dishonesty and financial crime. Mr. Fincher was sentenced to 24 months' imprisonment and 18 months' respectively. The FCA found that, in respect of his criminal convictions, Mr. Fincher had breached the 'Fit and Proper' requirements set out in its Handbook because he lacked honesty, integrity and reputation. The ban, which took effect on March 8, 2016, prohibits Mr. Fincher from carrying out any function in relation to any regulated activity carried out by any authorized firm, exempt person or exempt professional firm.

The final notice is available at: <http://www.fca.org.uk/static/documents/final-notices/geoffrey-harold-arthur-fincher.pdf>.

### **Financial Conduct Authority Bans Peter Charles Bottomley from UK Financial Services Industry**

On March 8, 2016, the FCA published a final notice that it had banned Peter Charles Bottomley from the UK financial services industry. Mr. Bottomley was convicted on July 9, 2015 of eight counts of dishonesty and financial crime offenses and sentenced to 72 months' imprisonment. Mr. Bottomley's conviction comprised five counts of dishonestly making false representations to make gain for self or another or cause loss to another or expose others to risk; one count of false accounting; one count of making or supplying articles used in fraud and one count of theft. The FCA found that, in respect of his criminal convictions, Mr. Bottomley had breached the Fit and Proper requirements set out in its Handbook because he lacked honesty, integrity and reputation. The ban, which took effect on March 8, 2016, prohibits Mr. Bottomley from carrying out any function in relation to any regulated activity carried out by any authorized firm, exempt person or exempt professional firm.

The final notice is available at: <http://www.fca.org.uk/static/documents/final-notices/peter-charles-bottomley.pdf>.

## **Financial Crime**

### **Final EU Legislation on New Requirements for Insider Lists**

On March 11, 2016, Commission Implementing Regulation on implementing technical standards on the precise format of insider lists under the EU Market Abuse Regulation was published in the Official Journal of the European Union. The ITS set out the requirements for issuers, emission allowance market participants, auction platforms, auctioneers and auction monitors, or any person acting on their behalf, to create and maintain insider lists. MAR extends the scope of the requirements on insider lists to impose the obligation on a wider range of persons as well as in relation to a wider scope of financial instruments. The ITS include template insider lists which aim to ensure the harmonization of information being collated in insider lists across the EU and require a greater amount of detail on insiders so that regulators may easily identify them if they need to. The ITS will apply from July 3, 2016, the same date that MAR will come into effect.

The ITS is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0347&from=EN>.

### **European Commission Adopts Secondary Legislation under the EU Market Abuse Regulation**

The European Commission has adopted regulatory technical standards under the Market Abuse Regulation on: (i) arrangements, systems and procedures for preventing, detecting and reporting abusive practices or suspicious orders or transactions; (ii) conditions for buy-back programs and stabilization measures; and (iii) investment recommendations. The RTS on preventing market abuse and reporting suspicious transactions impose requirements on operators of trading venues and persons professionally arranging or executing transactions for monitoring for and reporting on insider dealing or market manipulation and include a requirement to provide adequate training for their staff involved in such activities. The RTS on buy-backs and

stabilization set out the criteria which must be met for trades to become exempt from the market abuse ban, including requiring certain disclosure and reporting, conditions for trading and trading restrictions. The RTS on investment recommendations set out disclosure and distribution requirements for investment recommendations. All of the adopted RTS are subject to approval by the European Parliament and Council of the European Union, following which they will be published and come into force. The adopted version shows that it is intended that they will apply from July 3, 2016 when MAR comes into effect.

The RTS on preventing market abuse is available at: <https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-1402-EN-F1-1.PDF> and the RTS on buy-backs and stabilization is available at: <https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-1357-EN-F1-1.PDF>.

### **UK Libor Fraud Supreme Court Appeal Application Blocked**

On March 8, 2016, London's Court of Appeal refused leave for Tom Hayes' application to the UK Supreme Court to appeal his conviction. Mr. Hayes was convicted of eight charges of conspiracy to defraud and initially sentenced to 14 years in prison, which was subsequently downgraded to 11 years following an appeal. The conviction relates to the investigation by the Serious Fraud Office into the manipulation of LIBOR. Mr. Hayes' sentence is the longest in the UK for white collar crime. The six former brokers he was alleged to have conspired with were found not guilty in a separate London trial. The SFO is also pursuing Mr. Hayes in confiscation proceedings for proceeds of crime for around £3.8 million, scheduled to commence on March 12, 2016.

The SFO press release on conviction is available at: <https://www.sfo.gov.uk/2015/08/03/first-libor-defendant-on-trial-found-guilty/>.

## **Financial Market Infrastructure**

### **UK Payment Systems Regulator Publishes Interim Outcome of Review into the Supply of Indirect Access to Payment Systems**

On March 10, 2016, the UK Payment Systems Regulator published its interim report relating to its market review into the supply of indirect access to payment systems. The PSR considers that competition in the supply of indirect access is going in the right direction for indirect payment services providers. However, the regulator has concerns about choice, service quality and the ability of indirect payment services providers to switch providers. The PSR is also of the view that responses to financial crime regulation is limiting the provision of indirect access. The PSR does not intend to take regulatory action at this stage but will monitor developments in the industry to assess whether its concerns are addressed. The PSR is seeking feedback on its interim findings and its approach and comments are due by May 5, 2016.

The PSR's interim report is available at: <https://www.psr.org.uk/sites/default/files/media/PDF/MR1512-indirect-access-market-review-interim-report.pdf>.

## **Financial Services**

### **US Board of Governors of the Federal Reserve System Governor Brainard Remarks on US Economic Outlook, Market Liquidity and Financial Resilience**

On March 7, 2016, US Board of Governors of the Federal Reserve System Governor Lael Brainard provided an outlook on US economic conditions, an overview of the importance of financial market liquidity and the resilience and resolvability of large interconnected banks. With respect to liquidity, Brainard noted that day-to-day liquidity has not declined notably but that there have been changes to the characteristics of liquidity, including increased segmentation. She also noted the importance of recent proposals by the Commodity Futures Trading Commission and the Securities and Exchange Commission to understand the use of algorithmic trading and its impact on trading markets. With respect to improving the resilience and resolvability of systemic banking organizations, she noted that as a result of capital and liquidity regulations and stress tests, US banking organizations are now holding \$800 billion more in high-quality liquid assets than they were in 2011. She noted the capital surcharge for global systemically important banks and that she would hope to see it eventually integrated into the Federal Reserve's Comprehensive Capital Analysis and Review. Governor Brainard noted that the Federal Reserve will be reviewing comments to its proposed rule

on total loss-absorbing capacity, and that the long-term debt requirement in the proposed rule is a critical component of ending “too big to fail.”

Governor Brainard’s speech is available at: <http://www.federalreserve.gov/newsevents/speech/brainard20160307a.htm>.

### **US Financial Industry Regulatory Authority Evaluates Membership Application Rules**

On March 11, 2016, the US Financial Industry Regulatory Authority released a report evaluating the NASD Rule 1010 Series which rules govern FINRA’s Membership Application Program (MAP). The MAP rules are used by FINRA to evaluate the proposed business activities of member firms, including the applicant’s financial, operational, supervisory and compliance systems. FINRA staff conducted a comprehensive assessment of the rules, including seeking input from, and conducting a survey of, firms that are subject to the rules and non-member firms that assist in MAP submissions. FINRA staff concluded that the rules are generally effective in achieving their objectives of protecting investors. The report notes areas for improvement or clarification that FINRA will consider addressing through a combination of guidance, proposed rule modifications, process and administrative changes and technological updates to enhance the effectiveness and efficiency of the rules.

The press release is available at: <http://www.finra.org/newsroom/2016/finra-evaluates-membership-application-rules> and the report is available at: <http://www.finra.org/sites/default/files/RetroRuleReview-03-2016.pdf>.

### **Regulatory Technical Standards Amending the EU Prospectus Regime**

On March 4, 2016, a Delegated Regulation on regulatory technical standards for publication of prospectuses and the dissemination of advertisements was published in the Official Journal of the European Union. The RTS stipulates amendments to the EU Prospectus Regime, including: (i) arrangements for approval of prospectus by a regulator; (ii) arrangements for publication of a prospectus; (iii) the dissemination of advertisements relating to a public offering of securities or an admission to trading on a regulated market; and (iv) requirements regarding the consistency between information disclosed about an offer to the public, or admission to trading on a regulated market, and the information contained in the relevant prospectus. The RTS enter into force on the March 24, 2016.

The Delegated Regulation is available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.058.01.0013.01.ENG&toc=OJ:L:2016:058:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.058.01.0013.01.ENG&toc=OJ:L:2016:058:TOC).

### **UK Regulator Consults on Proposed Changes to Payment Accounts Regulation**

On March 2, 2016, the FCA published a consultation paper on proposed changes to the FCA Handbook following the implementation of the EU Payment Accounts Regulation. The consultation is aimed at entities that provide payment account services in the UK, such as banks and building societies. The EU Payments Directive was implemented in the UK through the UK Payment Accounts Regulations which come into effect on September 18, 2016. The FCA is obliged, under the PAR, to submit data to HM Treasury relating to payment accounts. The consultation outlines the draft changes that the FCA has proposed to enable it to carry out its obligations under the PAR. Proposals include: (i) issuance of guidance on the definition of a ‘payment account’ within the context of PAR; (ii) issuance of guidance on the implementation of the provisions on packaged accounts; (iii) the introduction of new regulatory requirements in relation to switching and payment accounts with basic features; and (iv) minor changes to the FCA Handbook to reflect the new PAR provisions regarding packaged accounts and switching of payment accounts. Responses to the consultation are due by May 3, 2016. The FCA aims to publish final guidance and changes to the FCA Handbook by the end of August 2016.

The consultation paper is available at: <http://www.fca.org.uk/static/fca/article-type/consultation%20paper/cp16-07.pdf> and the response form is available at: [https://www.the-fca.org.uk/cp167-response-form?field\\_fcasf\\_sector=unset&field\\_fcasf\\_page\\_category=unset](https://www.the-fca.org.uk/cp167-response-form?field_fcasf_sector=unset&field_fcasf_page_category=unset).

## MiFID II

### Regulatory Technical Standards for the Submission and Content of Notifications to EU Regulators Published

On March 1, 2016, the European Commission adopted a Delegated Regulation, in the form of Regulatory Technical Standards, detailing the content of the financial instrument reference data that must be supplied to regulators. The adopted RTS will be made under the Markets Abuse Regulation and Markets in Financial Instruments Regulation. They establish requirements for regulated entities to provide instrument reference data to regulators, which are then transmitted by regulators to the ESMA. The adopted RTS details which financial instruments are to be included as part of the reported instrument reference data. The adopted RTS also outlines ESMA's responsibility to review, assess, consolidate and publish the data on its website using automated processes. This adopted RTS will apply from July 3, 2016.

The adopted RTS is available at: <http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-1224-EN-F1-1.PDF> and the Annex is available at: <http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-1224-EN-F1-1-ANNEX-1.PDF>.

## Recovery & Resolution

### US Federal Deposit Insurance Corporation Chairman Addresses Supervisory Challenges and Cross-Border Resolution of Systemically Important Financial Institutions

On March 7, 2016, US Federal Deposit Insurance Corporation Chairman Martin Gruenberg discussed the improved financial condition of US banks, supervisory challenges that the FDIC is focused on, and developments in cross-border cooperation with respect to the resolution of systemically important financial institutions. Chairman Gruenberg noted the overall increase in FDIC-insured institutions' earnings in 2015 and that 2015 saw the fewest bank failures since before the financial crisis. Supervisory challenges that the FDIC and other banking supervisors are focused on for 2016 include interest rate risk, credit risk, including lending in higher risk categories and exposure to energy producers, and cybersecurity.

With respect to resolution plans, Chairman Gruenberg noted that the 2015 plans submitted by the wave 1 filers in July 2015 are currently under review by the FDIC and the Board of Governors of the Federal Reserve System. Moreover, he noted that the FDIC has worked closely with other major financial jurisdictions including the UK, EU, Switzerland and Japan, to understand how cross-border resolution of a large systemically important financial institution would unfold. Specifically, the FDIC is working with the new Single Resolution Board and is part of a joint working group with the European Commission that works bilaterally to focus on resolution and deposit insurance issues. Additionally, cross-border crisis management groups have been formed for each of the global systemically important financial institutions. Finally, Chairman Gruenberg noted the revised ISDA resolution stay protocol and the total loss absorbing capacity standards issued by the Financial Stability Board and proposed by the Federal Reserve as examples of how cross-border cooperation is improving resolution capabilities.

Chairman Gruenberg's speech is available at: <https://www.fdic.gov/news/news/speeches/spmar0716.html>.

### UK Regulator Consults on Client Money Rules and the Special Administration Regime

On March 9, 2016, the F issued a discussion paper on client money rules (CASS 7) and the Special Administration Regime Review. The discussion paper is relevant to all regulated firms that hold client assets or money for investment business. Client money rules govern how client assets are to be distributed by an insolvency practitioner managing a failed investment firm. The discussion paper is in response to the recommendations made in the Bloxham Final Report which aims to improve the speed of return of client assets and minimize the market impact of a failed firm's entry into special administration. The Report, commissioned by HM Treasury, contained a number of recommendations relating to the Special Administrative Regulations, the CASS rules and the procedures administrators follow in the event of an investment firm failure. The discussion paper also outlines the FCA's response to the 'speed proposal' and why, for reasons relating to accuracy of firm records and insolvency practitioner liability, is not being implemented. The speed proposal outlined the ability to distribute client money quickly following the failure of a firm, based on the records of the firm. Responses to the discussion paper are due by May 9, 2016. HM Treasury published a consultation paper on March 9, 2016, on reforms to the investment bank SAR, in response to the Report,

and should be read in tandem with the FCA discussion paper mentioned above. The HM Treasury consultation paper states that the government fully supports the aims of the recommendations of the Report.

The FCA discussion paper is available at: <http://www.fca.org.uk/static/fca/documents/discussion-papers/dp16-02.pdf>.

The Bloxham Report is available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/190983/peter\\_bloxham\\_review\\_of\\_investment\\_bank\\_sar2011.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/190983/peter_bloxham_review_of_investment_bank_sar2011.pdf).

HM Treasury's consultation paper is available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/506136/PU1896\\_SAR\\_Consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/506136/PU1896_SAR_Consultation.pdf).

## Shadow Banking

### European Securities and Markets Authority Sets out its Proposed Approach to the Reporting Obligation under the Securities Financing Transactions Regulation

On March 11, 2016, the European Securities and Markets Authority published a discussion paper on its approach to developing technical standards required under the Securities Financing Transactions Regulation. The SFTR mostly came into effect on January 12, 2016. One exception is a new reporting obligation which is being phased in according to counterparty type. The aim of the SFTR is to improve the transparency of securities lending, repurchase transactions, reverse repurchase transactions, buy-sell back or sell-buy back transactions and margin lending transactions. The new regulations are thought to help reduce the likelihood of such activities moving to the shadow banking sector.

The SFTR requires, amongst other things, all securities financing transactions to be reported to EU recognized trade repositories, including details on the composition of collateral, whether collateral is available for reuse or has been reused, the substitution of collateral and haircuts applied. The reporting obligation will apply to financial and non-financial counterparties subject to exceptions for central banks and similar bodies. The reporting regime under the SFTR will build on the system already in place for the reporting of derivatives transactions under the European Market Infrastructure Regulation. In relation to the reporting obligation, ESMA is required to prepare technical standards on the registration process for trade repositories, the format of reporting and the operational standards for the collection of data. The discussion paper sets out ESMA's proposed approach to those technical standards.

Comments on ESMA's approach should be provided by April 22, 2016. ESMA intends to publish a consultation paper including the proposed technical standards in Q3 2016 and to submit the final draft technical standards to the European Commission by January 13, 2017.

The discussion paper is available at: <https://www.esma.europa.eu/press-news/consultations/discussion-paper-draft-rts-and-its-under-securities-financing-transaction> and the SFTR is available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL\\_2015\\_337\\_R\\_0001&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_337_R_0001&from=EN).

## People

### President Obama Nominates Two Commissioners for the US Commodity Futures Trading Commission

On March 3, 2016, President Obama sent nominations to the US Senate to fill the two vacant Commissioner seats at the US Commodity Futures Trading Commission. The nominees are Brian Quintenz, founder and managing principal of Saeculum Capital Management LLC and a former aide to Representative Deborah Pryce (R-OH), and Christopher Brummer, a professor at Georgetown University Law Center.

### Director of Research at the Federal Reserve Bank of New York Announces Retirement

On March 7, 2016, James J. McAndrews, executive vice president of the Research and Statistics Group and Director of Research of the Federal Reserve Bank of New York, announced that he will be retiring from the FRBNY in June after 28 years at the Federal Reserve System. The FRBNY noted that it will immediately begin the search for McAndrew's successor.



### **UK Banking Standards Board Announces New Appointment to its Board**

On March 1, 2016, the Banking Standards Board announced that Sir Brendan Barber had been appointed as its Deputy Chairman. The BSB was established in April 2015 as an industry initiative. It aims to promote higher standards of behavior and competence in banks and building societies operating in the UK.

The press release is available at: <http://www.bankingstandardsboard.org.uk/deputychairmanappointed/>.

### **Upcoming Events**

March 22, 2016: PRA and FCA Seminar on New Bank Start Up Unit (registration closed).

March 31, 2016: ECB public hearing on proposed guide to recognition of Institutional Protection Schemes.

April 5, 2016: Federal Reserve Board Notice of Proposed Rulemaking to Collect Financial Information from US Intermediate Holding Companies of Foreign Banking Organizations.

April 29, 2016: First Single Resolution Board Conference: Charting the Course – Making Bank Resolution Work.

### **Upcoming Consultation Deadlines**

March 17, 2016: Basel Committee Consultation on Addressing Step in Risk.

March 18, 2016: EBA Consults on Proposed Guidelines on Stress Testing.

March 21, 2016: Federal Reserve Board Framework for Implementing the Basel III Countercyclical Capital Buffer.

March 21, 2016: Competition and Markets Authority Consultation on Retail Banking Market Investigation.

March 25, 2016: European Commission Consultation on Long Term and Sustainable Investment.

March 30, 2016: EBA Consultation on Draft ITS on Supervisory Report of Institutions.

March 31, 2016: ESMA Consultation on Proposed Guidelines under MAR.

March 31, 2016: New York State Department of Financial Services Proposed Transaction Monitoring and Filtering Program.

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

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

May 3, 2016: FCA Consultation on Proposed Changes to Payment Accounts Regulation.

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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