



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.

[Click here](#) to access our website on Financial Regulatory Developments.

The quarterly European Governance & Securities Law Focus newsletter is available [here](#).

In this Issue (please click on any title to go directly to the corresponding discussion):

Bank Prudential Regulation & Regulatory Capital	2
US Federal Deposit Insurance Corporation Adopts Proposed Rule to Increase Deposit Insurance Fund to Statutorily Required Level	2
US Comptroller of the Currency Discusses Credit Risk	2
European Commission Reports on EU Capital Requirements for Covered Bonds	2
European Commission Consultation on Remuneration Requirements under CRD IV	3
Bank of England Publishes Approach to Stress Testing the UK Banking System	3
Enforcement	3
US Regulators and Law Enforcement Agencies Announce Enforcement Orders Against Crédit Agricole S.A. and Credit Agricole Corporate and Investment Bank	3
Financial Services	4
European Supervisory Authorities Consult on Anti-Money Laundering and Counter Terrorist Financing Guidelines	4
European Securities and Markets Authority Publishes Standard Forms and Updated Documents in Preparation of Transparency Directive Entering into Force	5
Abu Dhabi Global Market Opens for Business	5
Regulatory Oversight Committee Proposals to Include Branch Data into the Global Legal Entity Identifier System	5
Financial Action Task Force Holds Plenary Meeting and Issues Report on Emerging Terrorist Financing Risks	6
Funds	6
UK Government Consults on Amendments to Undertakings for Collective Investments in Transferable Securities Directive	6
MiFID II	6
European Securities and Markets Authority Publishes Final Guidelines on the Commodity Derivatives Definition	6
Recovery & Resolution	7
EU Guidelines on the Application of Simplified Obligations under the Bank Recovery and Resolution Directive	7
European Commission Takes Action against Six Member States for Failing to Implement Bank Recovery and Resolution Directive	7
People	7
US Securities and Exchange Commission Names Wenchi Hu and Christian Sabella Associate Directors in the Division of Trading and Markets	7
Upcoming Events	8
Upcoming Consultation Deadlines	8

Bank Prudential Regulation & Regulatory Capital

US Federal Deposit Insurance Corporation Adopts Proposed Rule to Increase Deposit Insurance Fund to Statutorily Required Level

On October 22, 2015, the Federal Deposit Insurance Corporation issued for public comment a proposal to increase the reserve ratio of the Deposit Insurance Fund to the statutorily required minimum level of 1.35 percent. The Dodd-Frank Wall Street Reform and Consumer Protection Act increased the minimum for the reserve ratio from 1.15 percent to 1.35 percent and required the ratio to reach the new minimum by September 30, 2020. Moreover, the Dodd-Frank Act made this increase the responsibility of large banks with \$10 billion or more in total assets. In effect, the proposed rule, if finalized, would impose upon banks a quarterly surcharge of 4.5 cents per \$100 of their assessment base, with certain adjustments. It is expected that the surcharges will commence in 2016 and the reserve ratio would reach 1.35 percent following approximately eight quarters of payments of such surcharges (i.e. in advance of the required 2020 date). Comments on the proposed rule will be due 60 days after the rule is published in the Federal Register.

The proposed rule and the FDIC Chairman's statement are available at: https://www.fdic.gov/news/board/2015/2015-10-22_notice_dis_c_fr.pdf and <https://www.fdic.gov/news/news/speeches/spoct2215b.html>.

US Comptroller of the Currency Discusses Credit Risk

On October 21, 2015, Comptroller of the Currency, Thomas J. Curry, in a speech before the Exchequer Club, discussed the increasing credit risk in the federal banking system. Comptroller Curry believes the financial system is currently at a point in the market cycle where loan underwriting standards are weakening and credit risk is becoming an increasing point of focus. He stated, "...we should be asking whether banks have the appropriate risk management processes and structures in place to measure, monitor and control the increased credit risk they are taking on." In his remarks, the Comptroller mentioned leveraged lending and auto lending as two specific products of concern.

The Office of the Comptroller of the Currency press release and Comptroller's remarks are available at: <http://www.occ.gov/news-issuances/news-releases/2015/nr-occ-2015-141.html> and <http://www.occ.gov/news-issuances/speeches/2015/pub-speech-2015-141.pdf>.

European Commission Reports on EU Capital Requirements for Covered Bonds

On October 20, 2015, the European Commission published its report to the European Parliament and Council on the capital requirements for covered bonds as incorporated in the Capital Requirements Regulation. Under CRR, for banks investing in covered bonds that meet certain criteria, preferential risk weight is applied. The Commission is required to report on the appropriateness of: (i) the preferential risk weights taking into account types of cover assets, level of transparency on the cover pool and the impact of the covered bond issuance on the issuer's unsecured creditors; (ii) extending the preferential risk weights to covered bonds secured by certain aircraft loans; (iii) including covered bonds guaranteed by residential loans as eligible assets; (iv) the derogation for covered bonds backed by securitization instruments; and (v) the derogation for covered bonds backed by other covered bonds. The Commission considers the European Banking Authority's recommendations on the EU covered bond framework published in 2014 and sets out where it agrees with those recommendations and its proposed steps to implement them, including consulting with stakeholders on proposed changes to the legislative requirements. The Commission's recent consultation on the EU's covered bond framework under the Capital Markets Union initiative is also relevant and will impact on how the capital treatment for covered bonds is revised.

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

European Commission Consultation on Remuneration Requirements under CRD IV

On October 22, 2015, the European Commission published a consultation on the possible impact of the maximum remuneration ratio rule for variable and fixed remuneration required by the Capital Requirements Directive. The consultation also addresses the overall efficiency of the remuneration rules as set out in the CRD and CRR, together known as CRD IV. The consultation aims to obtain views on the remuneration provisions of CRD IV, including on: (i) the efficiency, implementation and enforcement of the principle of proportionality, as well as the identification of any gaps arising from the application of the principle; (ii) compliance with the maximum ratio rule for variable and fixed remuneration as prescribed by the CRD; and (iii) the impact of the maximum ratio rule on competitiveness, financial stability and staff in non-EEA countries. The Commission must report back to the European Parliament and Council by June 30, 2016. Responses are due by January 14, 2016.

The European Commission's consultation page and consultation paper are available at:

http://ec.europa.eu/justice/newsroom/civil/opinion/151015_en.htm and
<https://ec.europa.eu/eusurvey/runner/CRDRem2016>.

Bank of England Publishes Approach to Stress Testing the UK Banking System

On October 21, 2015, the Bank of England published its approach to stress testing and evaluating the resilience of the UK banking system and set out its plans in this regard for the next three years. The BoE's approach will include the introduction of an annual cyclical scenario, assessing risks to the banking system that derive from financial cycles, taking into account domestic, global and markets elements. This annual cyclical scenario will include all PRA-regulated banks and building societies with total retail deposits greater than £50 billion, on an individual or consolidated basis, at a firm's financial year-end date. Currently, this means the following firms will be included: Barclays plc, HSBC Holdings Group, Lloyds Banking Group, Nationwide Building Society, Royal Bank of Scotland Group, Santander UK plc and Standard Chartered Bank Group. UK subsidiaries of foreign-owned investment banks will be excluded. Every other year, the BoE will also biannually explore scenarios that are unrelated to the financial cycle and for which risks to financial stability and individual banks are deemed to be emerging. Therefore, in 2016, there will be a EBA stress test and a UK cyclical scenario test. In 2017, there will be both a UK cyclical and exploratory scenario test (for the first time). In 2018, the BoE intends to only run a UK cyclical scenario test. The results of the 2015 UK stress test are expected to be published on December 1, 2015.

The BoE's approach to stress testing is available at:

<http://www.bankofengland.co.uk/financialstability/Documents/stresstesting/2015/approach.pdf>.

Enforcement

US Regulators and Law Enforcement Agencies Announce Enforcement Orders Against Crédit Agricole S.A. and Credit Agricole Corporate and Investment Bank

On October 20, 2015, the US Department of Justice, the US Department of Treasury's Office of Foreign Assets Control, the New York County District Attorney's Office, the New York Department of Financial Services and the Federal Reserve Board jointly announced penalties against Crédit Agricole and Credit Agricole Corporate and Investment Bank,—headquartered in Paris, France—in connection with violations of US sanctions laws, and imposed a total of \$787.3 million in criminal and civil financial penalties. According to the agencies, CACIB and certain predecessor banks thereof processed thousands of transactions to or through US financial institutions involving countries/persons subject to sanctions regulations issued by OFAC through 2008, even as personnel within these entities were aware of the sanctions programs requiring US financial institutions to block and reject transactions involving such countries. In addition to monetary penalties, the Federal Reserve Board announced that Crédit Agricole and CACIB have consented to a cease and desist order requiring the firms to implement an enhanced global compliance program to meet US

sanctions requirements administered by OFAC. CACIB has also entered into settlement agreements with OFAC, the New York District Attorney's Office and the NYDFS. Furthermore, CACIB has entered into deferred prosecution agreements with the US Attorney's Office of District of Columbia for violations of the International Emergency Economic Powers Act and the Trading With the Enemy Act and with the New York County District Attorney's Office for violations of New York State law based on falsification of records of New York financial institutions. The NYDFS has also required Crédit Agricole to install an independent consultant for one year.

The Federal Reserve Board press release is available at:

<http://www.federalreserve.gov/newsevents/press/enforcement/20151020a.htm>.

The Federal Reserve Board order is available at:

<http://www.federalreserve.gov/newsevents/press/enforcement/enf20151020a1.pdf>.

The US Department of Justice notice is available at: <http://www.justice.gov/opa/pr/cr-dit-agricole-corporate-and-investment-bank-admits-sanctions-violations-agrees-forfeit-312>.

The US Department of Treasury settlement is available at: http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20151020_cacib_settlement.pdf.

The NYDFS press release is available at: <http://www.dfs.ny.gov/about/press/pr1510201.htm>.

Financial Services

US Federal Deposit Insurance Corporation Revises Provisions of its Securitization Safe Harbor Rule

On October 22, 2015, the Federal Deposit Insurance Corporation approved a final rule and a notice of proposed rulemaking that revise certain provisions of its Securitization Safe Harbor Rule. The final rule pertains to the treatment of financial assets transferred in connection with a securitization or participation. The rule clarifies the requirements of the securitization safe harbor as to the retention of an economic interest in the credit risk of securitized financial assets in connection with the effectiveness of the credit risk retention regulations adopted under Section 15G of the Securities Exchange Act. The final rule will be effective on the date that is the later of (i) 60 days after publication in the Federal Register and (ii) January 1, 2016.

The notice of proposed rulemaking intends to align the Securitization Safe Harbor Rule with US Consumer Financial Protection Bureau regulations dealing with the servicing of residential mortgages that became effective in January 2014. Specifically, the proposed rule would clarify that the requirement that a servicer take loss mitigation action within 90 days of delinquency does not necessitate that the securitization documents require a servicer to act contrary to the CFPB's mortgage loan servicing requirements as set forth in Regulation X. Comments on the proposed rule will be due 60 days after the rule is published in the Federal Register.

The FDIC's final rule relating to credit risk retention requirements and the notice of proposed rulemaking relating to residential mortgage loan servicing requirements are available at: https://www.fdic.gov/news/board/2015/2015-10-22_notice_sum_c_fr.pdf.

European Supervisory Authorities Consult on Anti-Money Laundering and Counter Terrorist Financing Guidelines

On October 21, 2015, the European Supervisory Authorities published two consultations on proposed joint guidelines for: (i) financial institutions on the factors for financial institutions to consider when assessing money laundering and counter terrorist financing risks associated with individual business relationships or occasional transactions and the extent to which a firm's customer due diligence can be adjusted based on the risk identified; and (ii) national regulators on the supervision of AML/CFT on a risk-sensitive basis. The guidelines are required to be prepared by the ESAs by the Fourth Anti-Money Laundering Directive, also known as 4AMLD, which Member States must transpose into national

law by June 26, 2017. The proposed guidelines would apply to banks, investment firms, insurers, insurance intermediaries, money brokerage firms, collective investment undertaking marketing its units or shares and to branches of those firms (regardless of whether their head office is located in an EU Member State or a third country) and to national regulators of those financial institutions. The consultations are open until January 22, 2016 and the ESAs expect to finalize them in Spring 2016. The final guidelines will apply from June 26, 2017.

The proposed Risk Factors Guidelines are available at:

http://www.eba.europa.eu/documents/10180/1240374/JC+2015+061+%28Joint+Draft+Guidelines+on+AML_CFT+RF+WG+Art+17+and+18%29.pdf and the proposed Risk-Based Supervision Guidelines are available at:

http://www.eba.europa.eu/documents/10180/1240311/JC+2015+060+%28Joint+Consultation+on+Guidelines+on+AML_CFT+RBS_Art+48%2810%29%29.pdf.

European Securities and Markets Authority Publishes Standard Forms and Updated Documents in Preparation of Transparency Directive Entering into Force

On October 22, 2015, the European Securities and Markets Authority published, as part of the preparations for the revised Transparency Directive entering into force on November 26, 2015, the following: (i) a new standard form for issuers to disclose details of their home member state to relevant national regulators; (ii) a new standard form for the notification of major holdings to relevant national regulators; (iii) an updated indicative list of financial instruments subject to notification requirements; and (iv) an update to its Q&As on the Transparency Directive.

The ESMA documents are available at: <http://www.esma.europa.eu/news/ESMA-prepares-entering-force-amended-Transparency-Directive?t=326&o=home>.

Abu Dhabi Global Market Opens for Business

On October 21, 2015, the Abu Dhabi Global Market announced that it was officially open for business and that the Financial Services Regulatory Authority was ready to accept applications for a license from financial institutions. The ADGM is the newest international financial center and it has adopted English common law by applying it in its jurisdiction for civil and commercial law. The application of English common law will govern matters such as contracts, tort, trusts, equitable remedies, unjust enrichment, damages, conflicts of laws, security and personal property.

Shearman & Sterling helped develop ADGM's world-class legal and regulatory regime to be in line with international standards to provide the sophistication and certainty found in the world's top financial centers. The firm drafted all the Financial Services and Markets Regulations and Financial Services Regulatory Authority Rules as well as legislation governing matters such as companies, insolvency, interpretation, commercial licensing, arbitration, courts, employment, limited liability partnerships, real property and strata title.

The ADGM press release is available at: <http://www.adgm.com/mediacentre/press-releases/abu-dhabi-global-market,-world%E2%80%99s-newest-financial-centre,-officially-open-for-business/>.

Regulatory Oversight Committee Proposals to Include Branch Data into the Global Legal Entity Identifier System

On October 19, 2015, the Regulatory Oversight Committee launched a consultation on its proposed approach to incorporating data on branches into the Global Legal Entity Identifier System, known as GLEIS. The ROC is proposing that only branches that meet the following conditions would be eligible for a LEI: (i) the branch is an international branch; (ii) the branch is registered in a publicly accessible local business registry or local regulatory registry in its host country; and (iii) the head office of the branch already has a LEI so that the two entities could be linked through their respective LEIs. Responses to the consultation are due by November 16, 2015.

The consultation paper is available at: http://www.leiroc.org/publications/gls/lou_20151019-1.pdf.

Financial Action Task Force Holds Plenary Meeting and Issues Report on Emerging Terrorist Financing Risks

On October 21, 2015, the Financial Action Task Force—an intergovernmental organization with the goal of developing polices to combat global money laundering—issued a report discussing emerging terrorist financing threats associated with foreign terrorist fighters, fundraising through social media, new payment products and services, and the exploitation of natural resources. On October 21 to 23, 2015, the FATF also held their first plenary meeting where they noted that terrorist financing is a top priority for the FATF. The report notes that though concerns regarding foreign terrorist fighters are not new issues, the recent conflict in Syria and Iraq has escalated their importance; they are now considered one of the key forms of material support for terrorist groups. The report describes foreign terrorist fighter funding needs, sources and methods used by foreign terrorist fighters and the challenges in combatting these threats. The report also highlights how new technologies, such as social media, can increase vulnerabilities with respect to terrorist financing. Other topics discussed at the plenary meeting include de-risking in the financial system and new FATF webpages discussing various AML/CFT compliance topics.

The FATF report is available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Emerging-Terrorist-Financing-Risks.pdf>.

The FATF meeting press release is available at: <http://www.fatf-gafi.org/publications/fatfgeneral/documents/outcomes-plenary-october-2015.html>.

Funds

UK Government Consults on Amendments to Undertakings for Collective Investments in Transferable Securities Directive

On October 23, 2015, HM Treasury published a consultation paper on the proposed amendments to UK legislation required to implement the Undertakings for Collective Investments in Transferable Securities Directive V. UCITS V must be implemented by March 18, 2016. Whilst UCITS V will primarily be implemented through changes to the Financial Conduct Authority rules, legislative changes are also required. HM Treasury's consultation seeks views on such legislative changes whereas the FCA is consulting separately on the FCA rule changes. HM Treasury will be implementing legislative provisions on national sanction regimes and UCITS depositaries. HM Treasury is seeking views on its approach to the implementation of the depositary provisions, in particular: (i) governance practices such as the eligibility to act as a depositary; (ii) liability for safekeeping of a UCITS fund's assets; and (iii) the delegation of custody of a UCITS fund's assets. In relation to sanctions, HM Treasury aim to make minor amendments to the relevant sections already in place in the Financial Services and Markets Act, clarifying that breaches of national legislation transposing UCITS V trigger the FCA's existing sanctions. Comments are due by December 17, 2015.

The consultation paper and proposed legislation are available at:

<https://www.gov.uk/government/consultations/consultation-on-amendments-to-the-ucits-directive-ucits-v/amendments-to-the-ucits-directive-ucits-v> and

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470069/Annex_B_-_Draft_Statutory_Instrument_-_UCITS_V_Directive.pdf.

MiFID II

European Securities and Markets Authority Publishes Final Guidelines on the Commodity Derivatives Definition

On October 21, 2015, ESMA published translations of its Guidelines on the application of the definition of commodity derivatives under the Markets in Financial Instruments Directive (known as MiFID I). The Guidelines aim to provide a common, uniform and consistent application of the definition of commodity derivatives. There is no commonly adopted definition of derivatives in the EU under MiFID I and ESMA was concerned that this would lead to the inconsistent

application of the European Market Infrastructure Regulation where it refers to the MiFID commodity derivatives definition. The Guidelines are also relevant to the reporting obligations under the Regulation on wholesale energy market integrity and transparency, known as REMIT. The Guidelines aim to ensure continuity when MiFID II replaces MiFID I from January 3, 2017. The Guidelines were initially published on May 6, 2015 with ESMA's final report and feedback, and applied from August 7, 2015.

The Guidelines are available at: <http://www.esma.europa.eu/news/ESMA-publishes-translations-its-Guidelines-application-definitions-C6-and-C7-under-MiFID-I?t=326&o=home>.

Recovery & Resolution

EU Guidelines on the Application of Simplified Obligations under the Bank Recovery and Resolution Directive

On October 22, 2015, the EBA published translations of its final Guidelines on the application of simplified obligations under the Bank Recovery and Resolution Directive. The EBA's guidelines set out: (i) criteria for considering whether a firm can be subject to simplified obligations; (ii) entitlement for national regulators to attribute certain weightings to such criteria; and (iii) creation of "mandatory indicators" which must be used and "optional indicators" which may be used in assessing application criteria. The BRRD allows national regulators to apply simplified recovery obligations, including simpler requirements as to the contents and details of resolution plans, and less frequency in their updates. Such obligations will not apply to globally systemically important institutions and other systemically important institutions. The Guidelines are addressed to national regulators and national resolution authorities and will apply from December 17, 2015.

The Guidelines are available at: <http://www.eba.europa.eu/documents/10180/1232502/EBA-GL-2015-16+GLs+on+simplified+obligations-EN.pdf/df9b0518-c938-4b09-8670-689ba9ba52c0>.

European Commission Takes Action against Six Member States for Failing to Implement Bank Recovery and Resolution Directive

On October 22, 2015, the European Commission announced that it had referred the Czech Republic, Luxembourg, the Netherlands, Poland, Romania and Sweden to the Court of Justice of the EU for failing to transpose the BRRD into national legislation. The BRRD was due to be transposed by all EU Member States by December 31, 2014. The referral follows a request in May 2015 by the Commission to 11 Member States, including the above six Member States, to fully implement the BRRD.

The press release is available at: http://europa.eu/rapid/press-release_IP-15-5057_en.htm.

People

US Securities and Exchange Commission Names Wenchi Hu and Christian Sabella Associate Directors in the Division of Trading and Markets

On October 20, 2015, the SEC named Wenchi Hu and Christian Sabella as Associate Directors in the SEC's Division of Trading and Markets. As Associate Director of Risk and Supervision, Ms. Hu will be responsible for supervising registered clearing agencies including those firms that clear securities-based swaps. Mr. Sabella will become Associate Director of Regulation, for which he will spearhead a team issuing recommendations for SEC policy and rulemaking focused on financial market infrastructure including clearing agencies, transfer agents and security-based swap data repositories. Ms. Hu joined the SEC in 2011 as a senior special counsel in the Office of Compliance Inspections and Examinations before moving to the Office of Derivatives Policy in the Division of Trading and Markets. Mr. Sabella joined the SEC in 2011 as a branch chief in the Office of Trading Practices.

The SEC press release is available at: <http://www.sec.gov/news/pressrelease/2015-243.html>.

Upcoming Events

October 30, 2015: The Federal Reserve Board will hold an open meeting to discuss proposed rules pertaining to the total loss-absorbing capacity standard for the largest US global banking institutions and US intermediate holding companies of foreign banks. Proposed TLAC standards were developed internationally by the Financial Stability Board in November 2014. Generally, the FSB's TLAC proposal requires covered banks to hold a certain amount of capital relative to their risk-weighted assets and maintain a minimum leverage ratio, with both requirements reflecting levels that double the corresponding minimums required by Basel III.

November 2, 2015: CFTC Market Risk Advisory Committee public meeting.

November 3, 4, 5, 9 and 11, 2015: FCA workshop for Credit Unions: Senior Managers and Certification Regimes Improving Individual Accountability.

November 4, 2015: European Central Bank Forum on Banking Supervision (registration by invitation only).

November 11, 2015: BoE Open Forum.

November 13, 2015: EBA public hearing on harmonized definition of default under the CRR.

November 18 and 19, 2015: EBA Fourth Annual Research Workshop: Financial Regulation and the Real Economy: A Micro Prudential Perspective.

November 20, 2015: EBA workshop on implementing EBA Guidelines on methods for calculating contributions to Deposit Guarantee Schemes (registration by invitation only).

December 15, 2015: EBA public hearing on the proposed EBA Guidelines on anti-money laundering and countering the financing of terrorism.

Upcoming Consultation Deadlines

October 30, 2015: Prudential Regulation Authority and FCA Consultations on Implementation of ring-fencing transfer schemes.

October 31, 2015: ESMA Consultation on draft Implementing Technical Standards under MiFID II and MiFIR.

November 9, 2015: FCA Consultation on Part I of Implementation of UCITS V Directive.

November 16, 2015: ROC Proposals to Include Branch Data into the GLEIS.

December 7, 2015: FCA Consultation on Part III of Implementation of UCITS V Directive.

December 7, 2015: PRA and FCA Consultation on Regulatory References.

December 7, 2015: Committee on Payments and Market Infrastructures Consultation on Correspondent Banking Reforms.

December 17, 2015: HM Treasury consultation on legislative amendments to implement the UCITS V Directive.

December 22, 2015: FCA and HM Treasury Consultation on Public Financial Guidance.

December 22, 2015: FCA and HM Treasury Call for Input on Improving Access to Financial Advice for Consumers.

December 24, 2015: ESMA consultation on RTS for the European Single Electronic Format under the Transparency Directive.

January 6, 2016: European Commission Consultation on EU Covered Bond Framework.

January 6, 2016: European Commission Consultation on EU Venture Capital Investment Funds Regulation and European Social Entrepreneurships Funds Regulation.

January 14, 2015: European Commission consultation on the impact of the maximum remuneration ratio between variable to fixed remuneration and the overall efficiency of remuneration rules.

January 15, 2016: PRA Consultation on Implementation of Ring-Fencing for Core UK Financial Services and Activities.

January 18, 2016: PRA Consultation on Identifying Other Systemically Important Institutions.

January 22, 2016: EBA Consultation on draft guidelines on application of definition of default under the CRR.

January 22, 2016: ESAs Consultation on Anti-Money Laundering Guidelines.

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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