SHEARMAN & STERLING

FINANCIAL REGULATORY DEVELOPMENTS FOCUS

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

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AML/CTF, Sanctions and Insider Trading

EU Final Guidelines on Fraud Reporting Under the Payment Services Directive

On July 18, 2018, the European Banking Authority published final Guidelines on fraud reporting under the revised Payment Services Directive. PSD2 aims to increase the security of electronic payments and decrease the risk of fraud. The Directive, which has applied since January 13, 2018, requires Payment Service Providers to provide, at least on annual basis, data on fraud relating to different means of payment to their national regulator. The regulators must in turn provide such data in aggregated form to the EBA and the European Central Bank. Existing data reporting practices vary across the EU. The EBA has worked with the ECB to develop these Guidelines to ensure that data is reported consistently and that the data is comparable and reliable.

The final Guidelines are addressed to PSPs, except account information service providers, and to their national regulators. The Guidelines cover payment transactions that have been initiated and executed, including the acquiring of payment transactions for card payments, identified by reference to: (a) fraudulent payment transactions data over a defined period of time; and (b) payment transactions over the same defined period. The Guidelines also set out how national regulators should aggregate the data.

Following the feedback to the EBA's consultation last year on proposed Guidelines, a number of changes have been made, including aligning the requirements with those in the ECB Regulation on payment statistics (ECB/2013/43). The main changes are:

- it had been proposed that quarterly reporting of high-level data would be required with a more detailed set of data on a yearly basis. Instead, the final Guidelines impose one uniform set of reporting requirements on a semi-annual basis;
- country-by-country data breakdowns are no longer required; and
- fraudulent transactions where the payer is the fraudster are no longer within the scope of the Guidelines.

The Guidelines apply from January 1, 2019, except for the reporting of data linked to the exemptions from the requirement to use strong customer authentication provided for in the Regulatory Technical Standards on strong customer authentication (Commission Delegated Regulation (EU) 2018/389), which will apply from September 14, 2019.

The final Guidelines are available at: http://www.eba.europa.eu/documents/10180/2281937/Guidelines+on+fraud+reporting+under+Article+96%286%29%20PSD2+%28EBA-GL-2018-05%29.pdf/5653b876-90c9-476f-9f44-507f5f3e0a1e.

UK Law Commission Seeks Input on Proposals for Reform of Anti-Money Laundering and Counter-Terrorism Financing Law in England and Wales

On July 20, 2018, the Law Commission published a substantial consultation paper entitled "Anti-Money Laundering: the SARs Regime," seeking views on proposals to reform the law of England and Wales governing anti-money laundering. In particular, the report considers issues around Suspicious Activity Reports, which are the mechanism by which the private sector make disclosures relating to money laundering and terrorism financing.

The Law Commission has identified a number of legal difficulties that arise from the current regime and, following extensive fact-finding meetings with stakeholders, it has also identified a number of issues in the current regime that are causing particular practical difficulties. In the consultation paper, the Law Commission: (i) identifies the most pressing problems and proposes provisional solutions to improve the

current regime; (ii) consults on reforming the consent regime within the Proceeds of Crime Act 2002 ("POCA"), which sets out the process whereby an individual who suspects that they are dealing with the proceeds of crime can seek permission to complete a transaction by disclosing their suspicion to the U.K. Financial Intelligence Unit of the National Crime Agency; and (iii) seeks to generate and consider ideas for long term reform.

The key elements of the anti-money laundering regime of England and Wales are located in Part 7 of POCA, which sets out the money laundering offences, legal obligations to report suspected money laundering (and criminal offences for failure to disclose), the "consent regime" of authorized disclosures which offer protection from criminal liability and a prohibition on "tipping off" (warning an alleged money launderer that a report has been made to the authorities or an investigation has begun). The POCA regime is supplemented by EU law and by the Terrorism Act 2000.

The Law Commission has identified the following legal difficulties within the current POCA regime (and parallel issues within the counter-terrorism financing regime) and makes proposals to address them:

- the "all-crimes" approach, whereby any criminal conduct that generates a benefit to the offender will be caught by the regime as "criminal property" and the consequent impact of this on the scope of reporting;
- the terminology used in Part 7 of POCA and the meaning of appropriate consent;
- the meaning of "suspicion" and its application by those with obligations to report suspicious activity;
- fungibility, criminal property and issues arising from mixing criminal and non-criminal funds;
- the extent to which information should be shared between private sector entities;
- the wide definition of criminal property that applies to the proceeds of any crime and has no minimum threshold value; and
- what should constitute a "reasonable excuse" for failure to make a disclosure within Part 7 of POCA.

The Law Commission's extensive fact-finding meetings with stakeholders have revealed that the following issues cause particular difficulties in practice:

- the large volume of disclosures to the UKFIU (on average, 2000 SARs are received per working day);
- the low intelligence value and poor quality of many of the disclosures that are made in accordance with present legal obligations;
- misunderstanding of the authorized disclosure exemption by some reporters;
- abuse of the authorized disclosure exemption by a small number of dishonest businesses and individuals;
- defensive reporting of suspicious transactions leading to high volume reporting and poor quality disclosures;
- the overall burden of compliance on entities under duties to report suspicious activity; and
- the impact of the suspension of transactions on reporting entities and those that are the subject of a SAR.

Comments on the consultation paper are invited by October 5, 2018. In the light of the responses the Law Commission receives to the consultation, it will decide on final recommendations to be presented to the U.K. Government.

The consultation paper is available at: https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2018/07/Anti-Money-Laundering-the-SARS-Regime-Consultation-paper.pdf and the summary of the consultation is available at: https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2018/07/AML-Summary-paper.pdf.

Financial Action Task Force Reports to G20 and FATF's US Presidency Announces Priority Work for 2018–2019

On July 19, 2018, the Financial Action Task Force published its report to the G20 Finance Ministers and Central Bank Governors. The report gives an overview of recent FATF work and its proposed next steps in its current workstreams. The United States takes over the FATF Presidency for the period July 2018 to June 2019 and has separately published a document summarizing its priority and other initiatives for the duration of its presidency.

The FATF report provides updates on its work in the following workstreams:

- FATF's work program on virtual currencies/crypto assets. The FATF is pursuing several workstreams in the area of virtual currencies/crypto assets, covering: (i) the money laundering and terrorist financing risks; (ii) the regulatory environment; and (iii) global standards and guidance, including review of the FATF's 2015 guidance on a risk-based approach to virtual currencies.
- countering the financing of proliferation of weapons of mass destruction—this work will be prioritized during the U.S. presidency;
- countering the financing of terrorism—under the U.S. presidency, the FATF will focus further work on improving the effectiveness of CTF efforts, including improving information sharing and coordination and by the development of guidance to help countries better understand terrorist financing risks;
- improving transparency and the availability of beneficial ownership information—the FATF has published a detailed report jointly with the Egmont Group of financial intelligence units;
- improving the effectiveness of the criminal justice system, via FATF engagement with judges and prosecutors;
- de-risking; and
- digital identity—under the U.S. presidency, the FATF will continue its work to understand digital ID and verification technologies and will prioritize its ongoing work stream to ensure that the FATF Standards are compatible with the growing use of digital forms of customer identification.

The FATF report to the G20 is available at: http://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Report-G20-FM-CBG-July-2018.pdf and the objectives for the FATF's U.S. Presidency 2018–2019 are available at: http://www.fatf-gafi.org/media/fatf/content/images/Objectives-FATF-XXX-(2018-2019).pdf.

Joint Financial Action Task Force and Egmont Group Report on Concealment of Beneficial Ownership

On July 18, 2018, the FATF issued a detailed report on the concealment of beneficial ownership, assessing how legal persons, legal arrangements and professional intermediaries can help criminals conceal wealth and illicit assets. The aim of the report is to help national authorities including financial intelligence units, financial institutions and other professional service providers in understanding the nature of the risks that they face. The report was prepared in conjunction with the Egmont Group of financial intelligence units.

The FATF and the Egmont Group together identified the need for further analysis of the vulnerabilities associated with beneficial ownership, with a particular focus on the involvement of professional intermediaries, to guide global responses. Their joint report brings together the results of analysis of open-source research, public intelligence reports, classified intelligence holdings and public and private sector experience and expertise. It sets out a comprehensive overview of the main characteristics and vulnerabilities that lead to the misuse of legal persons and arrangements, and the exploitation of professional intermediaries, to conceal beneficial ownership.

The report identifies a number of issues for consideration to help address the vulnerabilities associated with the concealment of beneficial ownership.

The FATF-Egmont Group report is available at: http://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf.

Bank Prudential Regulation & Regulatory Capital

U.S. Federal Reserve Vice Chairman Randal Quarles Discusses Streamlining the Supervision and Regulation of Large Financial Institutions

On July 18, 2018, U.S. Board of Governors of the Federal Reserve System Vice Chairman for Supervision, Randal Quarles, discussed the tailoring of supervision and regulation for large financial institutions. Vice Chairman Quarles noted that post-crisis regulations made the financial system demonstrably stronger and more resilient, and that there was some degree of tailoring that occurred in the initial creation of the post-crisis regulatory framework. Vice Chairman Quarles stressed that while steps have been taken since to improve the efficiency and efficacy of regulation, more can be done to streamline this framework. He noted that there are still improvements that can be made to allow for greater differentiation in the supervision and regulation of large firms and further tailoring, a theme he has reiterated in several prior speeches.

Vice Chairman Quarles discussed the mandate inherent in the Economic Growth, Regulatory Relief, and Consumer Protection Act to re-evaluate how financial institutions with total assets between $100 and $250 billion are regulated. He noted that to date, the tailoring of regulation and supervision has focused largely on differentiation by asset size. While the size of a financial institution is one factor to consider when tailoring regulation and supervision, Quarles stressed the importance of considering other factors including complexity and interconnectedness for which the use of short-term wholesale funding and cross-border activity may serve as proxies. He also discussed the possibility of streamlining of the regulatory and supervisory framework for financial institutions that have over $250 billion in total assets, but are below the G-SIB threshold. In closing, Quarles stated that the Federal Reserve Board should make it a priority to issue a proposed rule regarding the tailoring of enhanced prudential standards for large financial institutions, and that they will move more quickly than the statutory 18-month deadline for issuing such a proposed rule.

The full text of Vice Chairman Quarles's remarks is available at: https://www.federalreserve.gov/newsevents/speech/quarles20180718a.htm.

European Banking Authority Publishes Final Revised Pillar 2 Guidelines

On July 20, 2018, following a consultation between October 2017 and January 2018 on a package of revisions to certain of its Guidelines, the EBA published three final reports and revised Guidelines aimed at strengthening the Pillar 2 framework.

The revised Guidelines have been prepared in line with the EBA's April 2017 Roadmap for revisions of the Pillar 2 framework, to keep the SREP Guidelines that were published in December 2014 (and in force from

January 2016) up to date with respect to the EU and international standards. The EBA also aims to promote best supervisory practices and address issues identified in the EBA's ongoing work on assessment of supervisory convergence.

The three final reports cover:

- Guidelines on common procedures and methodology for Supervisory review and Evaluation Process (SREP). The revisions reflect external developments affecting the SREP framework since its introduction in 2014. These include the use of supervisory stress testing in SREP and the wider introduction of Pillar 2 Guidance in the 2016 EU-wide stress test, the Basel Committee on Banking Supervision's revision of its framework for interest rate risk in the non-trading book ("IRRBB"), and the clarification of the EU framework for the application of the maximum distributable amount.
- Guidelines on the management of interest rate risk arising from non-trading activities. The revisions build upon the EBA guidelines published on May 22, 2015 and take account of existing supervisory expectations and practices including the Standards on interest rate risk in the banking book published by the Basel Committee in April 2016.
- Guidelines on institutions' stress testing. These revisions replace the existing 2010 Guidelines on stress testing published by the EBA's predecessor, the Committee of European Banking Supervisors. The updated Guidelines reflect developments in stress testing methodologies and usage since 2010 and reflect industry practices and the incorporation of recovery planning. The Guidelines aim to provide common organizational requirements, methodologies and processes for the performance of stress testing by institutions, including a common stress testing taxonomy and detailed guidance on the way institutions should design and conduct a stress testing program.

The revised SREP Guidelines and the stress testing Guidelines will apply from January 1, 2019. The IRRBB Guidelines will apply from June 30, 2019 with transitional arrangements for certain provisions until December 31, 2019.

The final report and Guidelines on the revised common procedures and methodologies for the supervisory review and evaluation process (SREP) and supervisory stress testing are available at: http://www.eba.europa.eu/documents/10180/2282666/Revised+Guidelines+on+SREP+%28EBA-GL-2018-03%29.pdf, the final report and Guidelines on the management of interest rate risk arising from non-trading book activities are available at: http://www.eba.europa.eu/documents/10180/2282655/Guidelines+on+the+management+of+interest+rate+risk+arising+from+non-trading+activities+%28EBA-GL-2018-02%29.pdf, the final report and Guidelines on institutions' stress testing are available at: http://www.eba.europa.eu/documents/10180/2282644/Guidelines+on+institutions+stress+testing+%28EBA-GL-2018-04%29.pdf and the EBA's Pillar 2 Roadmap (April 2017) is available at: https://www.eba.europa.eu/documents/10180/1814098/EBA+Pillar+2+roadmap.pdf.

European Banking Authority Responds to Caius Capital LLP's Challenge Against Regulatory Capital Treatment of UniCredit CASHES

On July 20, 2018, the EBA published a response following allegations by Caius Capital LLP that UniCredit S.p.A.'s regulatory capital treatment in respect of a 2008 issuance of convertible and subordinated hybrid equity-linked securities (CASHES), which had been sanctioned by regulators, including the ECB, was incorrect. On May 3, 2018, Caius wrote a letter to the EBA, asking it to open an investigation for a breach of EU law on the basis that the structure of the transaction called into question the eligibility of ordinary shares

underlying the CASHES as CET1 capital under the EU Capital Requirements Regulation. Caius has since published further letters restating and expanding upon its arguments that a portion of UniCredit's regulatory capital currently recognized as CET1 under the EU rules is ineligible for such classification.

In its response, the EBA indicated that it does not intend to open an investigation into the breach of EU law alleged by Caius. It noted that the CASHES structure had been considered previously by the EBA Board of Supervisors and the relevant national regulators (including the ECB). While the Board of Supervisors was concerned at the time that the CASHES structure was complex and raised concerns from a technical perspective, it took into account the effect of a 2011 restructuring of UniCredit's share capital on the regulatory capital treatment associated with the CASHES. The EBA explained that, as part of this restructuring, the share premium associated with the CASHES transaction was capitalized and was no longer distinguishable from ordinary reserves, allowing it to be treated as Core Tier 1 capital under the EU regulatory capital rules in force at the time. The EBA acknowledged that the alleged breach, if present, could have a significant, direct impact on the EBA's objectives, in particular as regards achieving a sound, effective and consistent level of regulation and supervision, ensuring the transparency of financial markets and promoting equal conditions of competition. However, taking into account its previous position, the information gathered from its preliminary enquiries and the degree of discretion available to competent authorities in determining their annual supervisory examination programmes, the EBA did not consider that there were clear grounds to believe that the ECB had failed to carry out its supervisory responsibilities in a way that breaches its obligations under EU law. The EBA also felt that, pursuant to its Rules of Procedure for investigations into breaches of EU law, Caius' complaint was "more suitable to be dealt with by another person or body," pointing out that national regulators (including the ECB) may request the inclusion of specific own funds instruments in the annual supervisory review conducted by the EBA.

The EBA Response is available at:
http://www.eba.europa.eu/documents/10180/2101654/EBA+Letter+to+Caius+Capital+LLP.pdf.

Financial Stability Board Consults on Initial Evaluation of the Impact of Regulatory Reforms on Infrastructure Finance

On July 18, 2018, the Financial Stability Board was seeking feedback on an initial evaluation of the effects of the post-financial crisis regulatory reforms on infrastructure finance. The initial evaluation focuses on infrastructure finance provided by the financial sector, for which the financial regulatory reforms are of immediate relevance. The FSB has established a framework for assessing whether the reforms are achieving their intended outcomes and whether there are any material unintended consequences to be addressed.

The initial evaluation shows the results of a qualitative and quantitative analysis of the Basel III reforms to regulatory capital and the OTC derivatives reforms. The results of a qualitative analysis of reforms that are at an earlier stage of implementation, such as investment funds rules and accounting standards, are also presented.

Feedback on the initial evaluation is invited by August 22, 2018. The FSB will consider the feedback in finalizing its report to the G20, due to be published towards the end of November 2018.

The consultation paper is available at: http://www.fsb.org/wp-content/uploads/P180718.pdf.

Brexit for Financial Services

European Commission Presses for Step Up in Brexit Preparations

On July 19, 2018, the European Commission published a Communication on preparing for the withdrawal of the U.K. from the EU on March 30, 2019. Alongside the Communication, a factsheet has been published entitled, "Seven Things Businesses in the EU27 Need to Know in Order to Prepare for Brexit." In the Communication, the Commission warns all stakeholders that "[p]reparation must therefore be stepped up immediately at all levels and taking into account all possible outcomes." The Commission highlights that it is not yet certain that an agreement will be in place by exit day (March 30, 2019) and that a cliff-edge scenario could still occur. Without ratification of the Withdrawal Agreement, there will be no transitional period providing a further 21 months to prepare for when EU law ceases to apply to and in the U.K. and the Commission is urging all stakeholders to prepare for all scenarios.

In the Communication, the Commission counsels the financial services sector (see page 14) to prepare for a "hard Brexit." The Commission advises that ensuring that there is no disruption to their current business model and that they can continue to serve clients is the responsibility of all operators in all financial services sectors. Notably, the Commission is not concerned, at this stage, about any contractual continuity issues on the principle that the performance of existing obligations can continue post-Brexit. However, the Commission notes that "every type of contract needs to be looked at separately."

The Commission remarks that on Brexit, the U.K. will become a third country but omits to discuss the options for access to the EU available to financial services actors under the equivalence regime. In a speech given in New York on July 12, 2018, Michel Barnier indicates that the equivalence regime is the EU's preferred basis for the future EU-U.K. relationship in financial services. An enhanced equivalence framework was proposed by the U.K. Government in the White Paper released last week.

The Commission reminds financial services stakeholders of the eight notices it published last year on contingency planning and preparing for Brexit as well as the opinions and guidance published by the European Supervisory Authorities and member state national regulators. Furthermore, the Commission alludes to legislative proposals amending supervisory arrangements to address financial stability risks. These are the proposals to amend the European Market Infrastructure Regulation to give more supervisory powers to the European Securities and Markets Authority over third-country CCPs and the proposals to amend the role of the ESA's more generally. The Commission calls on the EU legislators to finalize the proposed legislation promptly.

Finally, the Commission notes that the technical working group co-chaired by the Bank of England and the ECB, which focuses on risk management in the period around March 30, 2019, will report to the Commission and HM Treasury.

The Communication confirms that the EU and U.K. are aiming to agree the Withdrawal Agreement in October 2018 and to publish a political declaration on their future relationship at the same time.

The Communication can be viewed at: https://ec.europa.eu/info/sites/info/files/communication-preparing-withdrawal-brexit-preparedness.pdf and the related factsheet can be viewed at: https://ec.europa.eu/info/sites/info/files/factsheet-preparing-withdrawal-brexit-preparedness-web_0.pdf.

You might also like to see our short client note "European Commission Confirms No Issue With Contract Continuity on a Hard Brexit." This can be viewed at: https://www.shearman.com/perspectives/2018/07/european-commission-confirms-no-issue-with-contract-continuity-on-a-hard-brexit.

UK Secondary Legislation Laid Before Parliament on Regulators' Powers to Onshore EU Standards on Brexit

On July 16, 2018, a revised draft of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 was laid before Parliament. The Regulations will come into force the day after the day on which they are made.

The draft Regulations, which include some changes to the original draft published in April 2018, among other things empower the BoE, the Financial Conduct Authority, the Prudential Regulation Authority and the Payment Systems Regulator to make EU Exit instruments and to make any necessary amendments to the RTS and Implementing Technical Standards that comprise "level 2" of the EU financial services legislation that will be onshored (that is, converted into U.K. law) on the U.K.'s withdrawal from the EU. A schedule to the draft Regulations sets out a full list of technical standards that will be onshored and allocates responsibility for making EU Exit instruments to one or more of the regulators.

The draft Regulations have been prepared under the EU (Withdrawal) Act 2018, which sets out an enhanced scrutiny procedure for secondary legislation used to amend certain retained EU law. This means that the draft Regulations will require the approval of both Houses of Parliament before they are made.

The draft Regulations are available at: http://www.legislation.gov.uk/ukdsi/2018/9780111171394/pdfs/ukdsi_9780111171394_en.pdf, the draft explanatory memorandum is available at: https://www.legislation.gov.uk/ukdsi/2018/9780111171394/memorandum/contents, details of the proposed approach to onshoring EU legislation are available at: https://finreg.shearman.com/uk-government-and-regulators-set-out-approach-to- and details of the EU (Withdrawal) Act 2018 are available at: https://finreg.shearman.com/uk-brexit-legislation-receives-royal-assent.

UK Secondary Legislation Laid Before Parliament Amending Building Societies Legislation

On July 16, 2018, a draft of the Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 was laid before Parliament. The Regulations will come into force on the day the U.K. withdraws from the EU.

The draft Regulations have been prepared using the power under the European Union (Withdrawal) Act 2018 to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the U.K. from the EU. The draft Regulations make amendments to various U.K. primary and secondary legislation that relate to building societies. The amendments remove references to EEA countries and territories, EU directives and EU member states that will no longer be appropriate following the U.K.'s withdrawal. In addition, the amendments remove provisions that provide reciprocal treatment to borrowers whose loans are secured on land in an EEA state and to bodies incorporated in an EEA state.

The draft explanatory memorandum accompanying the draft Regulations states that one impact of the amendments will be that loans secured on properties in the EEA following the U.K.'s withdrawal will no longer count towards the calculation of the building societies lending limit (which requires that 75% of a building societies' assets are secured on residential property). Another impact will be that borrowers taking out a mortgage with a building society on property in the EEA will no longer automatically become members of that society.

The EU (Withdrawal) Act 2018 sets out an enhanced scrutiny procedure for secondary legislation used to amend certain retained EU law. This means that the draft Regulations will require the approval of both Houses of Parliament before they are made.

The draft Regulations are available at: http://www.legislation.gov.uk/ukdsi/2018/9780111171554/pdfs/ukdsi_9780111171554_en.pdf, the draft explanatory memorandum is available at: http://www.legislation.gov.uk/ukdsi/2018/9780111171554/pdfs/ukdsiem_9780111171554_en.pdf, details of the proposed approach to onshoring EU legislation are available at: https://finreg.shearman.com/uk-government-and-regulators-set-out-approach-to- and details of the EU (Withdrawal) Act 2018 are available at: https://finreg.shearman.com/uk-brexit-legislation-receives-royal-assent.

Competition

UK Competition Authority Consults on Proposed Remedies to Adverse Competition in the Investment Consultancy and Fiduciary Management Markets

On July 18, 2018, the U.K. Competition and Markets Authority published a Provisional Decision Report in respect of the Investment Consultants Market Investigation in which it is assessing the supply and acquisition of investment consultancy services and fiduciary management services. The CMA has already published several working papers and an Issues Statement as part of the investigation.

The Provisional Decision Report sets out the CMA's assessment of the investment consultancy and fiduciary management markets, its general conclusions on competition, its provisional decision on competition and provisional remedies to address the identified competition issues. The CMA's provisional finding is that there is an adverse effect on competition which may result in material detriment to customers in both the investment consultancy and fiduciary management markets, although there are more concerns with the fiduciary management market.

In investment consultancy, the CMA considers that there is a low level of engagement by some customers in choosing and monitoring their provider. In addition, some customers may have difficulty in accessing and assessing the information needed to evaluate the quality of their existing investment consultant and identifying whether it would be to their advantage to use an alternative provider.

In fiduciary management, the CMA has found that firms providing both investment consultancy and fiduciary management have an "incumbency advantage" as a result of low customer engagement at the point of entry and due to investment consultants directing their advisory customers towards their own fiduciary management service. In addition, the CMA's view is that prospective customers cannot access comparable information on providers' historic performance and do not have clarity on fees because they cannot access information to assess whether a better fee deal is available from an alternative provider.

According to the CMA, the result is a diminished ability for customers to drive competition which in turn leads to a disincentive for providers' to compete. The CMA is proposing various remedies, including requiring:

- Pension trustees selecting their first fiduciary manager to run a competitive tender. Where trustees have already appointed a fiduciary manager, the trustee must put the role out to tender within five years.
- Pension trustees to set objectives when they hire an investment consultant so that they can better assess the quality of service.

- Fiduciary management firms to provide clearer information on fees by providing disaggregate fees for prospective customers and providing more detail to existing customers on costs, including those relating to exiting the service.
- Investment consultancy and fiduciary management firms to report to their customers on how they have performed for other clients using a set of common standards.

The CMA also recommends that The Pensions Regulator should provide trustees with more advice on how to choose and evaluate providers and that the FCA's regulatory scope should be expanded to increase oversight of the industry.

The CMA is inviting feedback on the Provisional Decision Report by August 24, 2018. The statutory deadline for the CMA's final report is March 13, 2019.

The provisional decision report is available at: https://assets.publishing.service.gov.uk/media/5b4f4db2e5274a730e4e273b/investment_consultants_market_investigation_provisional_decision_report.pdf, the appendices and glossary are available at: https://assets.publishing.service.gov.uk/media/5b4e20e7e5274a72fee9c20c/investment_consultants_market_investigation_appendices.pdf, the research and analysis page is available at: https://www.gov.uk/government/publications/investment-consultancy-market-investigation-summary-of-provisional-findings/serving-uk-pension-schemes-better-provisional-findings-from-the-cmas-investigation-into-investment-consultancy and the market investigation webpage is available at: https://www.gov.uk/cma-cases/investment-consultants-market-investigation.

UK Conduct Regulator Publishes Interim Report on Investment Platforms Market Study

On July 16, 2018, the U.K. FCA published an Interim report as part of its market study to ascertain whether competition between investment platforms is working in the interests of consumers. The FCA launched the investment platforms market study in July 2017 after potential competition issues in the sector were highlighted in the course of its asset management market study, on which it issued its final report in June 2017.

The FCA has been assessing competition in the sector by exploring a range of areas, namely: barriers to entry and expansion; business models; platform profitability; the impact of financial advisers; and consumer preferences and behavior. Noting the increasing vertical integration in the sector, the FCA has also been examining commercial relationships between platforms, asset managers, discretionary investment managers and financial advisers.

The FCA has found that the market appears largely to be working well for both advised and non-advised consumers and that customer satisfaction is currently high. However, the FCA has found that there are some customers for whom the market is not working as well as it should. The interim report highlights the issues the FCA has identified and consults on proposed remedies. The report is supported by eight annexes covering elements of the FCA's research and findings so far.

The FCA is seeking feedback, considering further work and exploring potential remedies in seven key areas:

- Making it easier for consumers on direct-to-consumer platforms to shop around and choose platforms on the basis of price. The FCA notes that the costs and charges disclosure requirements introduced by the revised Markets in Financial Instruments Directive should make it easier for customers to compare platforms and does not propose additional disclosure rules. The FCA is interested in whether the MiFID II requirements are encouraging

firms to innovate with different ways of providing disclosure. It is also looking at whether the role of third-party intermediaries could be enhanced.

- Strengthening the extent to which platforms drive competition between asset managers. The FCA may introduce further measures to improve the comparability of fund changes and to ensure they are presented prominently.
- Addressing the position of customers with large cash balances who may not be aware they are missing out on investment returns or foregoing interest by holding cash. The FCA is considering whether its existing rules go far enough in enabling customers to make informed decisions about the interest, charges and potential foregone investment returns on their cash balances.
- Making it easier for consumers and advisers to switch platforms. The FCA supports ongoing industry initiatives to improve switching times and disclosure. It is looking into the implications of prohibiting exit fees. The FCA is also looking at ways to improve switching between share classes and at how it might clarify its expectations around charging for the adviser's role in switching.
- Making adviser platforms work better for so-called "orphan" clients (previously advised clients who no longer have a relationship with their former adviser). The FCA will look at the appropriateness of charges levied on orphan clients. It is also considering whether to impose additional requirements on platforms to look at platform usage by orphan clients and levy fees proportionately and whether to require platforms to provide warnings to orphan clients that they may wish to switch to a more attractive proposition.
- Helping consumers who may be exposed to risk levels they do not expect. The FCA has found that similarly labelled model portfolios offered by platforms can expose investors to very different underlying assets and volatility in returns. The FCA plans to explore this issue further and may introduce measures such as applying risk and performance disclosure obligations for funds onto model portfolios or requiring firms to use standard terminology to describe their strategy and asset allocation.
- Addressing non-compliance with FCA rules. The FCA is seeking feedback on whether stakeholders consider that its rules go far enough to address non-compliance.

The FCA invites feedback on the issues raised in the Interim Report by September 21, 2018. It expects to issue its final report on the market study in early 2019.

The Interim Report (FCA MS17/1.2) is available at: https://www.fca.org.uk/publication/market-studies/ms17-1-2.pdf and Annexes 1-8 are available at: https://www.fca.org.uk/publications/market-studies/ms17-1-investment-platforms-market-study#Annexes.

Conduct & Culture

UK Conduct Regulator Confirms Policy on Recognizing Industry Codes of Conduct in Unregulated Markets

On July 20, 2018, the U.K. FCA published a Policy Statement outlining its final policy and rule amendments on its approach to recognizing industry codes of conduct in unregulated markets, including the process and criteria for doing so. In the FCA's view, industry codes of conduct can be useful in helping firms to communicate what is expected of individuals to meet their conduct obligations under the Senior Managers and Certification Regimes. The SM&CR, which currently only applies to banks, credit unions, building societies and large investment firms (including EEA branches), will be extended to insurers from December 2018 and to all other FCA-regulated firms from December 2019.

The FCA consulted in November 2017 on proposals to formally recognize industry codes of conduct in markets that are outside the regulatory perimeter and to publish a list of recognized industry codes on its

website. The consultation set out the criteria to be met for recognition of industry codes and proposed that recognition would apply for a renewable period of three years.

Individuals in firms within the scope of SM&CR must comply with the five Individual Conduct Rules, which apply to both regulated and unregulated activities that individuals undertake in the course of their employment at authorized firms. One of the Individual Conduct Rules (Rule 5) obliges individuals to observe "proper standards of market conduct." Firms and their Senior Managers are expected, under the SM&CR, to train, monitor and, where necessary, discipline their staff in relation to the Individual Conduct Rules. While the regulatory rulebook (and the U.K. and EU statutory framework that informs it) is the key determinant of proper standards of market conduct for regulated activities, the position is less clear where activities are unregulated. Industry codes in unregulated markets can provide a key source of information to determine proper conduct standards in those markets.

Following feedback to the November 2017 consultation, the FCA is proceeding with the "recognition" approach largely as consulted on, but with some changes to the process and criteria for recognition. A key change is that the FCA will make the recognition process more transparent by publicly consulting on every proposal to recognize an industry code. This will give market participants an opportunity to provide views on whether the code in question correctly reflects proper standards of market conduct within the relevant unregulated market. By conducting themselves in line with a recognized code's provisions, individuals may take comfort that this will tend to meet the obligation to observe "proper standards of market conduct." However, the FCA stresses that recognition of an industry code will not change the code's voluntary nature. The FCA will not mandate that individuals follow recognized industry codes and it is possible to observe proper standards of market conduct in other ways.

The November 2017 consultation also contained a discussion chapter on whether Principle 5 of the FCA's Principles for Businesses (namely that "a firm must observe proper standards of market conduct"), which currently only applies to regulated activities and ancillary unregulated activities, should be extended to include wholly unregulated activities (that is, unregulated activities that are not ancillary to regulated activities). Following consultation feedback, the FCA has decided not to pursue this extension at this time but will continue to consider it in the light of the code recognition process and other FCA priorities.

Recognized industry codes will be listed on a dedicated FCA webpage.

The Policy Statement (FCA PS 18/18) is available at: https://www.fca.org.uk/publication/policy/ps18-18.pdf, the FCA's recognized industry codes webpage is available at: https://www.fca.org.uk/about/recognised-industry-codes and details of the FCA's November 2017 consultation are available at: https://finreg.shearman.com/uk-financial-conduct-authority-consults-on-measur.

Consumer Protection

UK Conduct Authority Contemplates Introducing a New Duty of Care

On July 17, 2018, the FCA published its Approach to Consumers alongside a discussion paper on the potential introduction of a new duty of care and possible alternative approaches. The Approach to Consumers forms part of a series of formal approach documents explaining the FCA's approach to regulation in more depth. It should be read alongside the FCA's Mission document, which was first published in October 2016 and most recently updated in November 2017.

The Approach to Consumers sets out the FCA's approach to regulating for retail customers. The document sets out the FCA's vision for well-functioning markets that work for consumers, the relevant regulatory and

legal framework, when and how the regulator will act to protect consumers, the FCA's policy position on key issues and its strategy for ensuring that its consumer protection objective is advanced with the greatest impact.

One of the key issues concerns the approach to vulnerable consumers. The FCA has a supervisory expectation that firms will take reasonable steps to identify vulnerability and take appropriate action upon identifying vulnerable customers. The FCA expects firms to take note of indicators of potentially vulnerable customers and to have policies in place to deal with consumers who may be at greater risk of harm. The FCA intends to consult early in 2019 on guidance for firms on the identification and treatment of vulnerable consumers. The aim of the guidance will be to explain the FCA's expectations and to assist firms to fulfil them. The FCA also intends to hold events later in 2018 to identify the difficulties firms have in dealing with vulnerable consumers and to highlight best practice in identifying and assisting these consumers.

The discussion paper considers whether there is a need to introduce a new duty of care for all financial services firms. The FCA has been given opposing views on this topic and the feedback to the discussion paper is intended to assist the FCA in determining whether:

- there is a gap in the U.K.'s regulatory and legal framework or the way it is applied and if there is, whether a new duty would remedy the situation;
- a change in the existing framework is desirable, what form it might take and how it would work in practice, including the impact of any changes for consumers, firms and the FCA;
- alternative approaches might better address the concerns; and
- a new duty of care would improve conduct and culture in financial services and influence consumer outcomes in the context of the SM&CR.

Feedback to the discussion paper should be provided by November 2, 2018.

The Approach to consumers is available at: https://www.fca.org.uk/publication/corporate/approach-to-consumers.pdf and the discussion paper is available at: https://www.fca.org.uk/publication/discussion/dp-18-05.pdf.

Credit Ratings

EU Consultation on Revised Guidelines on Periodic Reporting by Credit Rating Agencies

On July 19, 2018, the ESMA launched a consultation on proposed revised Guidelines on periodic reporting by credit rating agencies. Under the EU Credit Rating Agencies Regulation, ESMA is responsible for direct supervision of EU CRAs registered with it. ESMA wishes to update its existing Guidelines, first published in 2015, to better reflect ESMA's supervisory powers and duties. In particular, ESMA does not consider that the current approach of determining reporting requirements according to supervisory fees matches its risk-based approach to supervision. ESMA is proposing to establish reporting categorizations for CRAs as well as reporting calendars based on reporting categorization. Furthermore, ESMA is proposing to standardize the reporting templates and to provide additional reporting instructions.

The consultation closes on September 26, 2018. ESMA intends to publish the Final Report on the Guidelines before the end of 2018.

The consultation is available at: https://www.esma.europa.eu/press-news/esma-news/esma-consults-revising-cras%E2%80%99-periodic-reporting.

Final EU Guidelines Clarify the Third-Country Endorsement Regime for Credit Ratings

On July 18, 2018, ESMA published a final report on the application of the endorsement regime under the EU CRA Regulation. The report contains ESMA's feedback statement for its earlier consultation on draft supplementary Guidelines as well as the final supplementary Guidelines.

The CRA Regulation provides that banks, investment firms, insurers, reinsurers, management companies, investment companies, alternative investment fund managers and CCPs may only use credit ratings for certain regulatory purposes if a rating is issued by: (i) an EU CRA registered with ESMA; or (ii) a third-country CRA under the endorsement regime or the equivalence/certification regime. Endorsement allows credit ratings issued by a third-country CRA to be used for regulatory purposes in the EU provided that the rating has been endorsed by an EU CRA. The CRA Regulation sets out various conditions for such an endorsement.

The supplementary Guidelines add a new section to ESMA's Guidelines on the application of the endorsement regime under the CRA Regulation, published on November 17, 2017. The 2017 Guidelines updated the 2011 version to clarify that ESMA expects an endorsing CRA to verify, and be able to demonstrate, that the third-country CRA has established internal requirements which are at least as stringent as the corresponding requirements in the relevant provisions of the CRA Regulation, or that the third-country CRA fulfills the endorsement requirements under the CRA Regulation.

The supplementary Guidelines aim to help EU CRAs to assess whether the internal requirements of a third-country CRA can be considered as stringent as those in the CRA Regulation. The Guidelines set out the general principles supporting the "as stringent as" test and provide a non-exhaustive list of alternative internal requirements that ESMA considers satisfactory. The identified alternative requirements relate to:

- fees charged by CRAs;
- analyst rotation;
- pre-publication of issuer notification;
- certain rating disclosures, such as the transparency report, initial reviews and preliminary ratings; and
- the treatment of inside information.

The Guidelines will apply to EU CRAs registered with ESMA when they are endorsing or intending to endorse a credit rating issued by a third-country CRA. The Guidelines will apply to credit ratings issued on or after January 1, 2019 and to existing ratings reviewed after that date.

The final report and Guidelines are available at: https://www.esma.europa.eu/sites/default/files/library/esma33-9-246_final_report_supplementary_guidelines_on_endorsement.pdf and details of ESMA's consultation on draft Guidelines are available at: https://finreg.shearman.com/eu-authority-seeks-to-clarify-the-third-country-e.

Derivatives

US Federal Reserve Vice Chairman Randal Quarles Discusses the SOFR Reference Rate

On July 19, 2018, Federal Reserve Board Vice Chairman for Supervision, Randal Quarles, discussed the evolution of reference rates at the Alternative Reference Rates Committee (ARRC) Roundtable at the Federal Reserve Bank of New York. Vice Chairman Quarles noted that the markets that underlie LIBOR have become very thin, providing data that highlights the limited number of LIBOR transactions that occur on a daily basis.

Vice Chairman Quarles emphasized that on a typical day, the volume of three-month LIBOR funding transactions is about $500 million, compared to the estimated $200 trillion of financial securities referencing U.S. Dollar LIBOR. Vice Chairman Quarles contrasted this with the newly established secured overnight financing rate (SOFR), which just three months after its initial production, is already outpacing LIBOR on a daily basis. SOFR is the product of a collaborative effort by the Federal Reserve Bank of New York, the Federal Reserve Board and the U.S. Office of Financial Research, and was created in response to the ARRC's interest in establishing a Treasury repo rate benchmark that would span the widest possible scope of the market. Vice Chairman Quarles further noted that the implementation timetable for SOFR is ahead of schedule, that market participants have begun offering clearing of SOFR overnight index and basis swaps, and that futures markets for SOFR have been introduced on the Chicago Mercantile Exchange.

The full text of Vice Chairman Quarles's remarks is available at: https://www.federalreserve.gov/newsevents/speech/quarles20180719a.htm.

Bank of England Consults on Term SONIA Reference Rates

On July 17, 2018, the BoE's Working Group on Risk-Free Reference Rates launched a consultation on term reference rates for the Sterling Overnight Index Average.

The Working Group is tasked with facilitating the transition across sterling bond, loan and derivatives markets from the use of sterling LIBOR to the use of SONIA. The Working Group notes that SONIA is an overnight rate, while LIBOR is commonly referenced in longer tenors of three or six months. Some end-users in loan and debt capital markets have reported that term rates are essential for their business needs.

The consultation focuses on how a term SONIA reference rate (TSRR) can be constructed to facilitate sterling LIBOR transition in markets where term rates better suit users' needs. The Working Group seeks feedback on how the development of TSRRs could be catalyzed. The Working Group notes that the International Swaps and Derivatives Association is simultaneously consulting on preventing derivatives market disruption in the event a key IBOR is discontinued and that the FSB has also recently stressed the importance to financial stability of transitioning most derivatives to robust overnight risk-free rates.

Comments on the consultation are invited by September 30, 2018. The Working Group anticipates that a number steps would be required to produce robust and reliable TSRRs by the second half of 2019.

The consultation paper is available at: https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/consultation-on-term-sonia-reference-rates.pdf, details of the ISDA consultation on IBOR fallbacks for OTC derivatives contracts are available at: https://finreg.shearman.com/international-swaps-and-derivatives-association-c and details of the Financial Stability Board's position paper is available at: https://finreg.shearman.com/financial-stability-board-welcomes-isda-consultat.

Enforcement

UK Serious Fraud Office Confirms Benchmark Manipulator Sentencing and Will Pursue Retrial of Bankers for Benchmark Manipulation

On July 19, 2018, the U.K.'s Serious Fraud Office announced that two former bankers that had been convicted of conspiracy to defraud for manipulating the Euro Interbank Offered Rate (EURIBOR) have been sentenced

to a combined total of just over 13 years' imprisonment. The SFO has also announced that it is going to pursue a retrial of three other bankers for whom the jury could not reach verdicts.

The SFO's announcement is available at: https://www.sfo.gov.uk/2018/07/19/senior-bankers-sentenced-to-more-than-13-years-for-rigging-euribor-rate/.

FinTech

UK Conduct Regulatory Outlines Scope of Digital Regulatory Reporting Pilot

On July 20, 2018, the U.K. FCA published the terms of reference (dated June 2018) for the pilot phase of its Digital Regulatory Reporting project. The FCA is working with the BoE in the RegTech sphere to explore ways of using technology to link regulation, compliance procedures and firms' policies and standards together with firms' transactional applications and databases.

The FCA published a Call for Input in February 2018 following a TechSprint in November 2017, at which a 'proof of concept' was achieved, showing that it was feasible to make regulatory reporting requirements machine readable and executable. Using this "Digital Regulatory Reporting" would allow firms to map their regulatory requirements directly to the data that they hold. Potential benefits include automated, straight-through processing of regulatory returns, greater accuracy in data submissions and faster implementation of changes in regulatory requirements, as well as cost reduction and improvements to competition.

The pilot is running for six months from June 2018 and will build on the proof of concept. Participants include five banks, a building society and two universities. The pilot will consider two use cases, one focused on retail reporting and one focused on wholesale reporting. The terms of reference for the pilot explain that a minimum viable product will be developed so that the potential benefits of machine readable and executable regulatory reporting can be evaluated. The scope of work during the pilot will address: (i) data modelling and removal of regulatory ambiguity; (ii) the delivery mechanism for codified regulations; and (iii) policy, legal and governance challenges. A dedicated Digital Regulatory Reporting webpage contains a timeline of the project's milestones.

The FCA intends to publish a feedback statement in Q3 2018, which will bring together the results of the February Call for Input and industry discussions. The findings of the pilot phase will be published in early 2019.

The terms of reference for the pilot are available at: https://www.fca.org.uk/publication/minutes/digital-regulatory-reporting-pilot-terms-of-reference.pdf, the FCA Digital Regulatory Reporting Webpage is available at: https://www.fca.org.uk/firms/our-work-programme/digital-regulatory-reporting and details of the Call for Input are available at: https://finreg.shearman.com/uk-financial-conduct-authority-consults-on-machin.

Financial Stability Board Reports on the Work of International Bodies on Crypto-Assets

On July 16, 2018, the FSB issued a report to the G20 providing an overview of its current work on crypto-assets and that of the international standard setters, namely the Committee on Payments and Market Infrastructures, the International Organization of Securities Commissions and the Basel Committee. The G20 Ministers of Finance and Central Bank Governors issued a communiqué in March 2018 stating that they were concerned that crypto-assets raise a number of problematic issues in the contexts of consumer and investor protection, market integrity, tax evasion, money laundering and terrorist financing. The G20 highlighted that crypto-assets may also have implications for financial stability and called on the FSB to provide a report on ongoing work by July 2018.

The report highlights that:

- The FSB has been working in collaboration with the CPMI to develop a framework and the associated metrics for monitoring the financial stability implications of crypto-assets markets.
- The CPMI has been analyzing applications of distributed ledger technology. It is also engaged in outreach, monitoring and analysis of payment innovations.
- IOSCO has established a Consultation Network on Initial Coin Offerings. The Network provides a forum for members to discuss experiences and concerns related to ICOs. IOSCO is also developing a Support Framework to identify ways to address domestic and cross-border investor protection issues. Additionally, IOSCO is discussing other issues around crypto-assets, including regulatory issues around crypto-assets platforms.
- The Basel Committee is quantifying the materiality of banks' direct and indirect exposures to crypto-assets, clarifying the prudential treatment of such exposures. The Basel Committee also continues to monitor developments related to crypto-assets and FinTech, following its publication "Sound Practices on the implications of FinTech developments for banks and bank supervisors" in February 2018.

The FSB Report is available at: http://www.fsb.org/wp-content/uploads/P160718-1.pdf.

Recovery & Resolution

UK Brings First Service Provider to Payment Systems Within Special Administration Regime

On July 17, 2018, the Financial Market Infrastructure Administration (Designation of VocaLink) Order 2018 was laid before Parliament. The Order relates to the special administration regime for operators of financial market infrastructures, which came into force on July 13, 2018. Relevant FMIs are operators of recognized payment systems, excluding recognized CCPs (which are already subject to the Banking Act resolution regime in the U.K.) and recognized central securities depositories operating a securities settlement system. However, HM Treasury is able to designate certain service providers to FMIs as infrastructure companies and so bring them within the FMI administration regime.

The Order designates VocaLink as an infrastructure company in connection with its provision of services to the operators of Faster Payments Service, Bacs and LINK. HM Treasury judges that an interruption in VocaLink's services to these operators of payment services would have a serious adverse effect on their operation.

The Order comes into force on August 9, 2018.

The Order (SI 2018/858) is available at: http://www.legislation.gov.uk/uksi/2018/858/pdfs/uksi_20180858_en.pdf?_sm_au_=iVV0JWRvs4jZrr36 and the explanatory memorandum is available at: http://www.legislation.gov.uk/uksi/2018/858/pdfs/uksiem_20180858_en.pdf?_sm_au_=iVV0JWRvs4jZrr36.

Securities

Final Draft Technical Standards Under the Securitization Regulation Published

On July 16, 2018, ESMA published final draft technical standards under the Securitization Regulation (also known as the STS Regulation). Among other things, the Securitization Regulation, which will apply directly across the EU from January 1, 2019, provides the criteria for identifying which securitizations will be

designated as "simple, transparent and standardised" (STS) securitizations. The Securitization Regulation requires originators and sponsors to notify ESMA when a securitization meets the STS criteria and ESMA will maintain a list of all such securitizations on its website. The Securitization Regulation allows (but does not require) originators, sponsors and securitization special purpose entities to use third-party firms to assess whether a securitization meets the STS criteria, provided that those firms are authorized by the relevant national regulator.

ESMA is mandated under the Securitization Regulation to develop RTS and ITS on these elements. ESMA consulted on proposed draft Technical Standards in December 2017.

ESMA has published the following final standards:

- final draft RTS specifying the information that the originator, sponsor and special purpose vehicle are required to provide to ESMA to comply with the STS notification obligations;
- final draft RTS specifying the applicable requirements for third party entities seeking authorization as providers of STS verification services; and
- final draft ITS setting out the templates that must be used for notification of STS status. Separate templates are provided for asset-backed commercial paper (ABCP) securitizations, ABCP programmes and non-ABCP transactions.

ESMA has submitted the draft RTS and ITS to the European Commission for endorsement. The final RTS and ITS will apply from January 1, 2019.

The final draft standards are available at: https://www.esma.europa.eu/press-news/esma-news/esma-defines-standards-implementation-securitisation-regulation.

Final Draft Technical Standards Under the EU Prospectus Regulation Published

On July 17, 2018, ESMA published a final report setting out RTS supplementing the Prospectus Regulation, which will apply fully across the EU from July 21, 2019. ESMA consulted on draft RTS in December 2017. The final draft RTS cover:

- the content and format of key financial information for the summary;
- the data necessary for the classification of prospectuses and the practical arrangements to ensure machine readability of that data;
- advertisements;
- situations requiring a supplement to the prospectus to be published;
- requirements on the publication of the prospectus; and
- technical arrangements for the notification portal for passporting prospectuses.

ESMA has submitted the final draft RTS to the European Commission for endorsement.

ESMA's final report is available at: https://www.esma.europa.eu/sites/default/files/library/esma31-62-1002_final_report_on_draft_rts_under_the_new_prospectus_regulation.pdf.

People

US Federal Reserve Vice Chairman Randal Quarles Sworn in for Second Term

On July 23, 2018, Randal Quarles, current Vice Chairman for Supervision, was sworn in for his second term as a member of the Federal Reserve Board. Vice Chairman Quarles's term as Vice Chairman for Supervision ends in 2021, while his term as a member of the Federal Reserve Board ends in 2032.

The full text of the Federal Reserve Board press release is available at: https://www.federalreserve.gov/newsevents/pressreleases/other20180723a.htm.

Upcoming Changes to the EU Single Resolution Board's Composition

On July 20, 2018, the EU Single Resolution Board announced that Sr. Mauro Grande, Board Member and Director of Resolution Strategy and Cooperation, intends to leave his position. Sr. Grande has been with the SRB since its inception in March 2015. Sr. Grande will vacate the position once a successor is appointed, which is expected in the next few months. The European Commission and the SRB have jointly published a vacancy notice and applications for the position can be made until September 12, 2018.

The SRB's announcement is available at: https://srb.europa.eu/en/node/592.

Upcoming Events

July 31, 2018: ECB public hearing on a draft Regulation proposing the materiality threshold for credit obligations past due under the CRR

September 4, 2018: EBA public hearing on its consultation on draft RTS for calculation of KIRB for securitized exposures

September 4, 2018: EBA public hearing on its consultation on draft Guidelines on outsourcing arrangements

September 4–5, 2018: OECD blockchain conference: Unleashing the potential and facing the challenges of blockchain (registration closes August 30, 2018)

September 11, 2018: FCA annual public meeting at which the FCA's 2017/2018 Annual Report will be discussed

October 15, 2018: SRB Conference 2018 - 10 years after the crisis: are banks now resolvable?

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

Upcoming Consultation Deadlines

July 27, 2018: EBA consultation on draft Guidelines on disclosure of non-performing and forborne exposures

August 13, 2018: EBA consultation on draft Guidelines on the conditions to be met to benefit from an exemption from contingency measures under the RTS on strong customer authentication and common and secure communication

August 17, 2018: ECB consultation on a draft Regulation proposing the materiality threshold for credit obligations past due under the CRR

August 17, 2018: FATF consultation on draft Risk-Based Approach Guidance for the securities sector

August 20, 2018: FSB call for feedback on the technical implementation of the TLAC Standard

August 20, 2018: FSB consultation on a draft cyber lexicon

August 22, 2018: PRA consultation on Securitization: the new EU framework and significant risk transfer

August 24, 2018: U.K. CMA consultation on proposed remedies to adverse competition in the investment consultancy and fiduciary management markets

August 30, 2018: ESMA consultation on extending the exemption from the clearing obligation for intragroup transactions with third country group entities

September 3, 2018: PSR discussion paper on use of data in the payments industry

September 4, 2018: CFTC's proposed amendments to SRO surveillance programs for FCMs

September 7, 2018: FMSB consultation on a draft statement of good practice on algorithmic trading

September 7, 2018: ESMA consultation on amendments to the MiFID II tick size regime

September 17, 2018: Comment deadline for Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds (proposed changes to the Volcker Rule)

September 19, 2018: EBA consultation on draft RTS for calculation of KIRB for securitized exposures

September 21, 2018: FCA interim report (MS 17/1.2) on its investment platform market study

September 24, 2018: EBA consultation on draft Guidelines on outsourcing arrangements

September 25, 2018: PRA consultation on reflecting the Systemic Risk Buffer framework within the Leverage Ratio framework for U.K. systemic ring-fenced bodies

September 26, 2018: ESMA consultation on revised Guidelines for periodic reporting by CRAs

September 30, 2018: BoE consultation on term SONIA reference rates

October 5, 2018: ESMA consultation on minimum information content of exempted documents under the Prospectus Regulation

October 5, 2018: ESMA consultation on draft guidelines on risk factors under the Prospectus Regulation

October 5, 2018: BoE/PRA/FCA Discussion Paper on operational resilience of firms and FMIs

October 5, 2018: FCA consultation on a new workers directory

October 5, 2018: Law Commission consultation on reform of the anti-money laundering regime for England and Wales

October 12, 2018: ISDA consultation on fall backs based on overnight risk-free rates for certain derivatives

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

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:

CONTACTS

BARNEY REYNOLDS
Partner
London
barney.reynolds
@shearman.com

REENA AGRAWAL SAHNI
Partner
New York
reena.sahni
@shearman.com

RUSSELL SACKS
Partner
New York
rsacks
@shearman.com

THOMAS DONEGAN
Partner
London
thomas.donegan
@shearman.com

SUSANNA CHARLWOOD
Partner
London
susanna.charlwood
@shearman.com

DONNA PARISI
Partner
New York
dparisi
@shearman.com

NATHAN GREENE
Partner
New York
ngreene
@shearman.com

GEOFFREY GOLDMAN
Partner
New York
geoffrey.goldman
@shearman.com

JOHN ADAMS
Partner
London
john.adams
@shearman.com

PHILIP UROFSKY
Partner
Washington D.C.
philip.urofsky
@shearman.com

ELIAS ALLAHYARI
Associate
London
elias.allahyari
@shearman.com

CHRISTINA BERLIN
Associate
Washington, DC
christina.berlin
@shearman.com

TIMOTHY J. BYRNE
Counsel
New York
tim.byrne
@shearman.com

TOBIA CROFF
Partner
Milan
tobia.croff
@shearman.com

DANIEL FROST
Associate
London
daniel.frost
@shearman.com

MATTHEW HUMPHREYS
Associate
London
matthew.humphreys
@shearman.com

THOMAS JONES
Associate
London
thomas.jones
@shearman.com

JENNY DING JORDAN
Associate
New York
jenny.jordan
@shearman.com

P. SEAN KELLY
Associate
New York
sean.kelly
@shearman.com

JENNIFER SCOTT KONKO
Associate
New York
jennifer.konko
@shearman.com

HERVÉ LETRÉGUILLY
Partner
Paris
hletreguilly
@shearman.com

OLIVER LINCH
Associate
London
oliver.linch
@shearman.com

JENNIFER D. MORTON
Counsel
New York
jennifer.morton
@shearman.com

JENNIFER OOSTERBAAN
Associate
New York
jennifer.oosterbaan
@shearman.com

WILF ODGERS
Associate
London
wilf.odgers
@shearman.com

MATTHEW READINGS
Partner
London
matthew.readings
@shearman.com

BRADLEY K. SABEL
Of Counsel
New York
bsabel
@shearman.com

INYOUNG SONG
Associate
London
inyoung.song
@shearman.com

KOLJA STEHL
Counsel
London
kolja.stehl
@shearman.com

ELLERINA TEO
Associate
London
ellie.teo
@shearman.com

599 LEXINGTON AVENUE | NEW YORK | NY | 10022-6069