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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 if you wish to access our Financial Regulatory Developments website.

Click here if you wish to read our quarterly European Governance & Securities Law Focus newsletter.

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

Bank Prudential Regulation & Regulatory Capital

US Board of Governors of the Federal Reserve System Extends Comment Period for Proposed Countercyclical Capital Buffer Framework

On January 29, 2016, the US Board of Governors of the Federal Reserve System extended the comment period to March 21, 2016, for the proposed policy statement describing the Federal Reserve Board's framework in setting the Countercyclical Capital Buffer. The original deadline for submission of comments was February 19, 2016. The Federal Reserve Board first announced it was soliciting public comment on the proposed policy statement on December 21, 2015. The CCyB is a macro-prudential tool that raises capital requirements on internationally active banking institutions when the risk of above-normal losses in the future is elevated. The proposed policy statement describes various financial-system vulnerabilities as well as issues for Federal Reserve Board consideration in setting the buffer.

The proposed policy statement is available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20151221b1.pdf and the appendix to the statement is available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20151221b2.pdf.

US Federal Reserve Board Extends Comment Period on "Total Loss-Absorbing Capacity" Proposal

On January 29, 2016, the Federal Reserve Board extended the comment period to February 19, 2016, for its proposed rule to strengthen the ability of the largest domestic and foreign banks operating in the United States to be resolved without extraordinary government support or taxpayer assistance. The original deadline for submission of comments was February 1, 2016. The proposed rule requires US Global Systemically Important Banks and the US operations of foreign GSIBs to meet a long-term debt requirement, a "Total Loss-Absorbing Capacity" requirement and a requirement that the parent holding company of a domestic GSIB avoid entering into various financial arrangements that would create obstacles to an orderly resolution. These requirements would strengthen the ability of those banks to withstand financial stress and failure without imposing losses on taxpayers. The proposed rule also includes regulatory capital deductions for firms regulated by the Federal Reserve Board that hold unsecured debt of the parent holding companies of domestic GSIBs.

The Federal Register notice is available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160129b1.pdf.

US Federal Reserve Board Releases Supervisory Scenarios for 2016 Comprehensive Capital Analysis and Review and Dodd-Frank Act Stress Test Exercises

On January 28, 2016, the US Federal Reserve Board released supervisory scenarios for the 2016 Comprehensive Capital Analysis and Review and Dodd-Frank Wall Street Reform and Consumer Protection Act stress test exercises. The Federal Reserve Board also issued instructions to firms participating in CCAR. CCAR assesses the capital planning processes and capital adequacy of the largest US-based bank holding companies, including the firms' planned capital actions. The Dodd-Frank Act stress tests are a forward-looking component to help evaluate whether firms have sufficient capital. Firms are required to use the supervisory scenarios in both the stress tests conducted as part of CCAR and those required by the Dodd-Frank Act. The outcomes are measured under three scenarios: severely adverse, adverse and baseline. This year, CCAR will include 33 bank holding companies with $50 billion or more in total consolidated assets, all of which are required to submit their capital plans and stress testing results to the Federal Reserve Board on or before April 5, 2016. The Federal Reserve Board will announce the results of its supervisory stress tests by June 30, 2016, with the exact date to be announced later.

The Federal Reserve Board press release is available at: http://www.federalreserve.gov/newsevents/press/bcreg/20160128a.htm, the CCAR summary instructions are available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160128a1.pdf?_sm_au_=iVVR7nBMts6MMSFH and the Dodd-Frank Act stress test exercises are available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160128a2.pdf?_sm_au_=iVVR7nBMts6MMSFH. The 2016 macro scenario tables are available at: http://www.federalreserve.gov/newsevents/press/bcreg/2016-macro-scenario-tables.zip.

US Office of the Comptroller of the Currency Releases Dodd-Frank Act Stress Test Scenarios for 2016

On January 28, 2016, the US Office of the Comptroller of the Currency released economic and financial market scenarios to be used by certain financial companies, including national banks and federal savings associations with total consolidated assets of more than $10 billion, to conduct upcoming stress tests. The supervisory scenarios include baseline, adverse and severely adverse scenarios, as described in the OCC's final rules that implement annual stress test requirements under Section 165(i)(2) of the Dodd-Frank Act.

The OCC press release is available at: http://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-8.html and the 2016 scenario information is available at: http://www.occ.gov/tools-forms/forms/bank-operations/stress-test-reporting.html.

US Federal Reserve Board, Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency Approve Interim Final Rule Expanding 18-Month Exam Cycle for Certain Institutions

On January 21, 2016, US Federal Deposit Insurance Corporation Chairman Martin J. Gruenberg and US Comptroller of the Currency Thomas J. Curry announced interim final rules expanding the examination cycle for institutions with less than $1 billion in assets that meet certain standards, under statutory power granted by the Fixing America's Surface Transportation Act which was enacted on December 4, 2015. Specifically, the rule will permit institutions with total assets of $200 million or greater and not exceeding $1 billion that receive a composite CAMELS or ROCA rating of "1" or "2," and that meet other qualifying criteria, to qualify for an 18-month examination cycle. Previously, the longer, 18 month exam cycle was only available to certain insured depository institutions with less than $500 million in assets. Comments on the interim final rule may be submitted for 60 days, following the publication of the proposed amendments in the Federal Register.

The FDIC Chairman's Statement is available at: https://www.fdic.gov/news/news/speeches/spjan2116a.html.

The OCC's press release is available at: http://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-5.html and the Comptroller's Statement is available at: http://www.occ.gov/news-issuances/speeches/2016/pub-speech-2016-5.pdf.

The interim final rule is available at: https://www.fdic.gov/news/board/2016/2016-01-21_notice_dis_a_fr.pdf.

US Federal Deposit Insurance Corporation Seeks Comment of How Small Banks are Assessed for Deposit Insurance

On January 21, 2016, the Board of Directors of the FDIC released a revised notice of proposed rulemaking that would amend the manner in which banks with less than $10 billion in assets that have been insured by the FDIC for at least five years are assessed for deposit insurance. The rule reflects comments received on the initial proposed rule on small bank assessments that the FDIC released in June 2015 on topics such as calculation of asset growth and treatment of reciprocal deposits and Federal Home Loan Bank advances. Specifically, the new proposed rule, among other things: (i) uses a brokered deposit ratio as a measure in the financial ratios method for calculating assessment rates for established small banks (instead of the previously proposed core deposit ratio); (ii) removes the existing brokered deposit adjustment for established small banks; and (iii) revises the previously proposed one-year asset growth measure. The new proposed rule, like the June 2015 proposal, seeks to ascertain appropriate assessments that accurately reflect the risks taken by smaller banks. Comments may be submitted for 30 days, following the publication of the proposed amendments in the Federal Register.

The press release is available at: https://www.fdic.gov/news/news/press/2016/pr16004.html and the notice of proposed rulemaking is available at: https://www.fdic.gov/news/board/2016/2016-01-21_notice_dis_b_fr.pdf.

US Federal Deposit Insurance Corporation Vice Chairman Thomas M. Hoenig Provides Remarks on the Role of Debt in Bank Resiliency and Resolvability

On January 20, 2016, FDIC Vice Chairman Thomas M. Hoenig gave a speech to the Peterson Institute for International Economics, during which he challenged the Federal Reserve Board's proposal on TLAC. While agreeing that converting debt is often part of a reorganization or recovery strategy, Hoenig discussed the risks of increased debt levels on the stability of the banking system. The proposed TLAC rule requires GSIBs to maintain sufficient long-term debt to facilitate a Single Point of Entry resolution approach, wherein only the top-tier holding company would be put into receivership and through conversion of

debt to equity the operating subsidiaries would be recapitalized. Hoenig noted that the proposed rule estimates that to meet a collective $680 billion long-term debt requirement, GSIBs will need to issue approximately $100 billion in new debt. Hoenig also discussed the negative consequences of the proposal, notably the leverage that it would add to an already highly-leveraged industry, as well as the fact that it may encourage firms to adopt an SPOE resolution strategy and otherwise change their business models even where their Title I resolution plans do not currently contemplate an SPOE plan. The Vice Chairman suggested that "(t)he long-term debt requirement would place added earning demands on the banking system and could be counter-productive, especially during a period of financial stress". Hoenig also suggested that rather than imposing a rule that facilitates only the SPOE strategy, regulators may want to adopt an approach that is tailored to the business model and resolution plan of each individual institution, even where the approach might call for varying debt and equity requirements.

The Vice Chairman's speech is available at: https://fdic.gov/news/news/speeches/spjan2016.html.

US Board of Governors of the Federal Reserve System Approve the Establishment of a Representative Office by Unione di Banche Italiane, S.p.A.

On January 19, 2016, the Federal Reserve Board approved an application by Union di Banche Italiene, S.p.A., a foreign bank headquartered in Italy, to establish a representative office in New York under section 10(a) of the International Banking Act of 1978. UBI is organized as a joint stock corporation under Italian law and has total assets of approximately $108 billion. As part of its evaluation under the IBA and Regulation K, the Federal Reserve Board noted its previous determinations that other banks in Italy were subject to comprehensive, consolidated supervision by the Bank of Italy alone. However, UBI became subject to direct prudential supervision by the European Central Bank pursuant to the Single Supervisory Mechanism as of November 2014. This order appears to represent the first Federal Reserve Board order under the IBA since the SSM took effect, finding that a foreign bank is subject to comprehensive, consolidated supervision by the ECB and a home country supervisor (the Bank of Italy) acting through the SSM.

The order is available at: http://www.federalreserve.gov/newsevents/press/orders/orders20160119a1.pdf.

US Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency Release Advisory on External Audits

On January 15, 2016, the Federal Reserve Board, FDIC and OCC released an advisory indicating support for the Basel Committee on Banking Supervision's March 2014 guidance entitled "External audits of banks" for internationally active banks. The advisory notes that while the guidance is largely consistent with existing US standards and practices, there are certain differences between the principles and the expectations of US regulators. The advisory defines "internationally active banks" as insured depository institutions that have consolidated total assets of $250 billion or more, consolidated total on-balance sheet foreign exposure of $10 billion or more and US depository institution holding companies that meet, or have a subsidiary depository institution that meets, the same standards (with the calculation of consolidated total assets excluding assets held by insurance underwriting subsidiaries, in the case of bank holding companies). Key differences highlighted in the advisory include: (i) unlike the guidance, US standards and practices do not require "tendering", i.e., putting an external audit contract out for bid, but the US banking agencies recommend that institutions consider whether such practice is appropriate; and (ii) while the US banking agencies encourage open communication between external auditors and a financial institution's supervisor, there is no generally applicable requirement for an external auditor to report directly to the institution's primary regulators.

The interagency advisory statement is available at: https://www.fdic.gov/news/news/financial/2016/fil16005a.pdf.

European Securities and Markets Authority Opinion on Draft Implementing Technical Standards on Main Indices and Recognized Exchanges

On January 29, 2016, the European Securities and Markets Authority published its Opinion on draft Implementing Technical Standards on Main Indices and Recognized Exchanges under the Capital Requirements Regulation. The Opinion sets out proposed updates to the draft ITS further to requirements under the CRR to define main indices and recognized exchanges. The definitions are required because the terms have been used in the specification of eligible collateral which is used for the

calculation of credit risk by banks and investment firms subject to the CRR. ESMA provided the final draft ITS to the Commission in January 2015 for endorsement. The Commission notified ESMA that it intended to endorse the ITS with amendments by adding the Hang Seng Composite Index and the Russell 3000 Index. In ESMA's Opinion, the Hang Seng Composite Index and the Russell 3000 Index should not be added to the list of main equity indices. Instead, ESMA suggests adding the Russell 1000 Index, the Shanghai Shenzhen CSI 300, the S&P BSE 100 Index and the FTSE Nasdaq Dubai UAE 20 Index to that the list. ESMA also undertook a full review of the ITS and suggests replacing the Nikkei 225 with the Nikkei 300 and the NZSE 10 with the S&P NZX 15 Index. ESMA recommends that the European Commission consider amending the current procedure used to update the list of indices and exchanges to a less burdensome and more speedy process, as the long timeframes required to update a legislative instrument such as an ITS are not appropriate for the frequency with which indices or exchanges are created or merged.

The Opinion is available at: https://www.esma.europa.eu/press-news/esma-news/esma-updates-crr-standard-main-indices-and-recognised-exchanges.

European Systemic Risk Board Makes Recommendations on EU Macro-Prudential Policy

On January 29, 2016, the European Systemic Risk Board published Recommendations and Decisions relating to setting Countercyclical Buffer Rates for exposures to third countries and the assessment of cross-border effects of and voluntary reciprocity for macro-prudential measures. The ESRB is responsible for macro-prudential oversight within the European Union. In respect of CBRs, the ESRB recommends that national designated authorities: (i) inform the ESRB as soon as a third county sets a CBR in excess of 2.5%; (ii) identify material third countries on an annual basis taking into account the ESRB Decision on the assessment of materiality of third countries for recognizing and setting CBRs; and (iii) consider and coordinate on whether a lower CBR should be set for exposures to a third country in the event that the third country authority sets a lower CBR. In respect of the assessment of cross-border effects of macro-prudential measures, the ESRB recommends that national designated authorities: (i) assess the cross-border effects, prior to adoption, of the implementation of their own macro-prudential measures on other Member States and on the Single Market, including the risk of regulatory arbitrage; (ii) reciprocate the macro-prudential measures adopted by other Member States where such reciprocation is recommended by the ESRB; and (iii) notify the ESRB of any macro-prudential measure implemented, including an assessment of the effect of the measure and whether any reciprocation by other Member States may be necessary. The ESRB has also established a website which sets out the CBR rates set by national designated authorities.

The ERSB Recommendations and Decisions are available at: http://www.esrb.europa.eu/news/pr/2016/html/pr160129.en.html and the CBR rate website is available at: http://www.esrb.europa.eu/ccb/applicable/html/index.en.html.

European Banking Authority Letter to European Commission on Revised Deadlines for Delivery of Technical Standards

On January 28, 2016, the European Banking Authority published a letter dated December 18, 2015 addressed to the European Commission in which the EBA requests delays to the dates by which the EBA is required to prepare technical standards and reports under the CRR, the Capital Requirements Directive, the EU Bank Recovery and Resolution Directive, the European Market Infrastructure Regulation and the Credit Rating Agencies Regulation. The EBA states that for the most part it has not been able to deliver its mandates according to deadlines due to a persistent shortage in resources and the need to prioritize other workstreams. The EBA invites the Commission to request the EBA to fulfil its mandates within new time limits.

The EBA's letter is available at: http://www.eba.europa.eu/documents/10180/1349330/Letter+to+Olivier+Guersent+DG+FISMA+re+Postponement+EBA+products.pdf/014df70e-4530-4655-bb67-5f102d5b311d.

EU Regulations on Prudent Valuations Published in Official Journal of European Union

On January 28, 2016, a Regulation setting out Regulatory Technical Standards for prudent valuations under the CRR was published in the Official Journal of the European Union. The RTS relate to firms applying the CRR standards to assets measured

on a fair value basis. The RTS deal with matters including: (i) the methodology for calculating Additional Valuation Adjustments; (ii) consideration to be given to available market data; and (iii) the simplified and core approaches for the determination of AVAs. The Regulation enters into force on February 17, 2016.

The RTS for Prudent Valuation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.021.01.0054.01.ENG&toc=OJ:L:2016:021:TOC.

EU Regulations on Functioning of Colleges of Supervisors Published in Official Journal of the European Union

On January 28, 2016, RTS and ITS on the operational functioning and general conditions for the functioning of colleges of supervisors under the CRD were published in the Official Journal of the European Union. Colleges bring together different national and European regulatory authorities that supervise a banking group and provide a framework for coordinating and performing supervisory duties within the EU banking sector. The College of Supervisors is established for EEA banks with subsidiaries or significant branches in other EEA countries and includes national regulators from the EU as well as non-EU areas when necessary. The Regulations deal with matters including: (i) the mapping of group institutions; (ii) the designation of members and observers of a college; and (iii) participation in college meetings and activities. The Regulations enter into force on February 17, 2016.

The RTS are available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.021.01.0002.01.ENG&toc=OJ:L:2016:021:TOC and the ITS are available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.021.01.0021.01.ENG&toc=OJ:L:2016:021:TOC.

EU Regulation on Joint Processes for the Application of Prudential Permissions Published in Official Journal of European Union

On January 28, 2016, a Regulation was published in the Official Journal of the European Union, setting out ITS on the joint decision process for the application for certain prudential permissions under the CRR. The ITS deal with matters including: (i) the involvement of third country supervisory authorities in the assessment process; (ii) the steps and procedures for joint decision processes; (iii) the preparation of assessment reports and arriving at and communicating joint decisions; and (iv) resolution of disagreements and decisions taken in the absence of a joint decision. The Regulation enters into force on February 17, 2016.

The ITS on the joint decision process for the application for certain prudential permissions is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.021.01.0045.01.ENG&toc=OJ:L:2016:021:TOC.

European Banking Authority Impact Assessment of New International Financial Reporting Standards

On January 27, 2016, the EBA issued a press release announcing the launch of an impact assessment of the forthcoming implementation of the new financial instruments standard, the International Financial Reporting Standards 9, on a sample of around 50 regulated firms across the EU. The new standards supersede the reporting standards for financial instruments in force in the EU since 2005 and change the way financial instruments are accounted for. The new standards will apply to: (i) banks that are required to prepare consolidated financial statements in accordance with the IFRS; (ii) banks that are required to use the IFRS for the determination of own funds; and (iii) certain investment firms. IFRS also apply to listed issuers as a result of the Transparency Directive. The EBA will assess the impact of the new standards on regulatory own funds, the interaction between the standards and prudential requirements as well as how firms are preparing for the implementation of the new standards.

The press release is available at: http://www.eba.europa.eu/-/eba-launches-an-impact-assessment-of-ifrs-9-on-banks-in-the-eu.

European Commission Report on Appropriateness of Definition of Eligible Capital under the Capital Requirements Regulation

On January 26, 2016, the European Commission published a report on the appropriateness of the definition of "eligible capital" under the CRR. The definition of "eligible capital" is used for defining large exposures, setting large exposure limits, determining the prudential treatment of qualifying holdings outside the financial sector and setting the capital requirements for investment firms with limited investment services.

"Eligible capital" is the sum of Tier 1 capital and Tier 2 capital. However, the amount of Tier 2 capital that will be recognized as "eligible capital" is restricted, although the restrictions are subject to a transitional period. The definition of "eligible capital" replaced the "own funds" definition from January 1, 2014 and firms were allowed to fully recognize Tier 2 capital as "eligible capital." From 2015, firms could only recognize Tier 2 capital for up to 75% of the amount of Tier 1 capital they held as "eligible capital," and in 2016 that will move to 50%. Once fully transitioned, the amount of Tier 2 capital that will be recognized as "eligible capital" cannot exceed one third of Tier 1 capital. The Commission is required under the CRR to report to the European Parliament and the European Council on whether the new definition was appropriate and whether any legislative amendments should be proposed. Based on the opinion of the EBA in February 2015, the Commission has found that to date there have been no particular issues over the appropriateness of the definition of "eligible capital." However, given that the new definition has been phased in and will only be fully implemented in 2016, the Commission will work with the EBA to continue to monitor the application of new definition.

The Commission's report is available at: http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-21-EN-F1-1.PDF and the EBA's Opinion is available at: http://finreg.shearman.com/european-banking-authority-opinion-on-definition-of-eligible-capital.

European Banking Authority Consults on Draft Guidelines on Implicit Support in Securitizations

On January 20, 2016, the EBA published proposed Guidelines on implicit support for securitization transactions (i.e. support provided by a firm where it is not contractually obliged to do so), as required by the CRR. Examples of implicit support include purchases of deteriorating credit risk exposures from an underlying pool or improvement of quality of credit enhancements through the addition of higher quality risk exposures. The CRR requires that any reduction in capital requirements gained through a securitization must be justified by a corresponding transfer of risk to third parties. The CRR restricts the provision of implicit support, because it does not result in significant risk transfer to third parties, by requiring firms to hold a minimum of own funds against all of the securitized exposures as if they had not been securitized. A transaction is not considered to provide support if it is executed under arm's length conditions and is taken into account in the assessment of significant risk transfer. The EBA's proposed Guidelines cover what constitutes arm's length conditions and when a transaction is not structured to provide support. For arm's length conditions, an objective test is provided and the assessment must be made having due regard to the information available at the time when the transaction is entered into. The EBA also proposes guidance on the application of the factors for assessing whether a transaction is structured to provide support and when firms should notify their national regulator about the transaction. The draft Guidelines only apply to implicit support. Support provided by a firm under its contractual obligations (explicit support) is addressed under existing EBA guidelines on significant risk transfer. Responses to the consultation are due by April 26, 2016.

The consultation paper is available at: http://www.eba.europa.eu/documents/10180/1340842/EBA-CP-2016-01+%28Consultation+Paper+on+Guidelines+on+implicit+support%29.pdf and the EBA Guidelines on Significant Risk Transfer under contractual obligations are available at: https://www.eba.europa.eu/documents/10180/749215/EBA-GL-2014-05+Guidelines+on+Significant+Risk+Transfer.pdf.

European Banking Authority Publishes Revised Final Draft Technical Standards and Guidelines for the Identification of Global Systemically Important Institutions

On January 13, 2016, the EBA published: (i) revised final draft ITS on the uniform formats and date for disclosure of values used to identify Global Systemically Important Institutions; (ii) revised final draft RTS on the specification of the methodology for the identification of G-SIIs; and (iii) draft revised Guidelines on the further specification of the indicators of global systemic importance and their disclosure under the Capital Requirements Directive IV. The methodology used by the EBA to identify G-SIIs closely follows the approach taken by the Basel Committee. The Basel Committee has however recently published a new data template that includes minor revisions for the 2016 identification exercise. Consequently, the related EU standards need to be updated. The full data template will now be incorporated in the revised Guidelines which state that in addition to G-SIIs, large

firms with an overall exposure of more than €200 billion that may constitute a potentially significant threat to financial stability will also be subject to the uniform disclosure requirements identifying G-SIIs. The disclosure process will take place with the EBA acting as a central data hub, aggregating the data it receives. Instructions on how institutions are to complete the template will be published on the EBA website shortly and the full data template will be updated on an annual basis.

The revised final draft ITS are available at: http://www.eba.europa.eu/documents/10180/1333778/EBA-ITS-2016-01+%28Final+draft+ITS+on+G-SII+identification%29.pdf, the revised final draft RTS are available at: http://www.eba.europa.eu/documents/10180/1333789/EBA-RTS-2016-01+%28Final+draft+RTS+on+G-SII+identification%29.pdf/0c22fb99-e3c5-41a4-ae96-26080a5737a5 and the revised draft Guidelines are available at: http://www.eba.europa.eu/-/eba-publishes-revised-final-draft-technical-standards-and-guidelines-on-methodology-and-disclosure-for-global-systemically-important-institutions.

Systemic Risk Buffer Proposals for UK Banks and Building Societies Published

On January 29, 2016, the Bank of England's Financial Policy Committee published its proposed framework for the UK Systemic Risk Buffer for ring-fenced banks and large building societies (i.e. those that will be subject to the UK ring-fencing rules from 2019 with assets over £25 billion). The SRB, a discretionary buffer under the EU CRD, aims to mitigate and prevent long-term non-cyclical macro-prudential or systemic risk. The FPC is proposing that the SRB rate would be calibrated according to a firm's total Risk-Weighted Assets so that firms with RWAs: (i) less than £175 billion will have a 0% SRB; (ii) between £175 and £320 billion will have a 1% SRB; (iii) between £320 and £465 billion will have a 1.5% SRB; (iv) between £465 and £610 billion will have a 2% SRB; (v) between £610 and £755 billion will have a 2.5% SRB; and (vi) over £755 billion will have a 3% SRB.

Firms subject to the SRB will also be subject to a 3% minimum leverage ratio requirement as well as an additional leverage ratio buffer of 35% of the applicable SRB rate. The Prudential Regulation Authority will apply the SRB to individual firms from 2019, which is when the ring-fencing rules will become applicable. Comments to the consultation are due by April 22, 2016. The FPC intends to finalize the rules by May 31, 2016.

The FPC's consultation paper is available at: http://www.bankofengland.co.uk/financialstability/Documents/fpc/srbf_cp.pdf.

UK Prudential Regulation Authority Amends Pre-Issuance Notification Regime

On January 29, 2016, the PRA published final rules amending the Pre-Issuance Notification regime. The PIN regime applies to banks, building societies, insurers and PRA-designated investment firms. Under the amended rules, banks, building societies and PRA-designated investment firms will have to give the PRA one month's notice before issuing a Common Equity Tier 1 instrument and complete the CET1 Compliance Template, which may be used instead of providing a legal opinion on the quality of capital requirement. The advance notification requirement will not apply where certain capital instruments are issued on substantively similar terms to prior issued instruments. Insurers will be required to submit legal opinions for instruments issued, other than ordinary share capital, on the quality of capital requirement and must also provide the PRA with one month's notice prior to amending capital instruments. Insurers will also be subject to certain conditions in the event that they make use of the advance notification exemption for drawdowns from note issuance programs. All relevant firms will be required to submit accounting opinions when issuing Additional Tier 1 Capital instruments or Restricted Tier 1 Capital instruments, as applicable.

The PRA's Policy Statement and final rules are available at: http://www.bankofengland.co.uk/pra/Documents/publications/ps/2016/ps216.pdf.

Basel Committee on Banking Supervision Revises Standards on Minimum Capital Requirements for Market Risk

On January 14, 2016, the Basel Committee published revised standards on minimum capital requirements for market risk, which form part of the new market risk framework as endorsed by the Group of Central Bank Governors and Heads of Supervision, known as GHOS, the Basel Committee's governing body. Improvements in the new risk framework include: (i) a revised boundary between the banking and trading books that will reduce scope for arbitrage; (ii) a revised internal models approach with more coherent and comprehensive risk capture; (iii) an enhanced model approval process and more prudent recognition of

hedging and portfolio diversification; and (iv) a revised Standardized Approach that serves as a credible fall-back and floor to the model-based approach and facilitates more consistent and comparable reporting of market risk across banks and jurisdictions. The Basel Committee will also finalize its efforts to address the problem of excessive variability in risk-weighted assets by the end of this year. These efforts will include a proposal to remove the internal model approach for credit risk and limits on the use of internal models for credit risk (in particular, through the use of floors). The GHOS also agreed that the final design and calibration of the leverage ratio should be based on a Tier 1 definition of capital and should comprise a minimum level of 3%. The Basel Committee will finalize the calibration in 2016 to allow time for the leverage ratio to be implemented as a Pillar 1 measure by January 1, 2018.

The revised minimum capital requirements for market risk are available at: http://www.bis.org/bcbs/publ/d352.pdf.

Conduct & Culture

Chartered Banker Professional Standards Board Press Release on Foundation Standard

On January 25, 2016, the UK Chartered Banker Professional Standards Board issued a press release stating that over the past year, over 187,000 bankers achieved the CBPSB's Foundation Standard, meeting the desired target for 2015. The CBPSB is a programme that was launched in October 2011 by eight UK banks together with the Chartered Banker Institute, aiming to encourage professionalism in banking and restore public confidence in the banking industry. The CBPSB includes a Board, consisting of senior industry leaders, as well as a Professional Standards Committee, which engages in standard-setting activities. The CBPSB's standards set out the conduct and expertise required of all professional bankers, as well as the benchmarks against which professional competence can be measured. The Foundation Standard, which is one of three professional standards (the others being the Intermediate Standard and the Advanced Standard) sets out the skill requirements and professional and technical knowledge required by all those working in the banking industry.

The press release is available at: http://www.cbpsb.org/news/news_detail.cb-psb-news-january-2016.html and the Foundation Standard is available at: http://www.cbpsb.org/filemanager/root/site_assets/publications/high_res_editions_feb_2014/90.62_foundation_standard_a4.pdf.

Compensation

UK Regulator Consults on New Rules for Buy-Outs of Variable Remuneration

On January 13, 2016, the PRA published a consultation paper on proposals to introduce new rules on buy-outs of deferred variable remuneration, i.e. where a firm compensates a new employee for deferred variable remuneration not received from a previous employer due to the employee having left the former firm. The new rules would apply to PRA-regulated banks, building societies and designated investment firms and would amend the existing Remuneration Part of the PRA Rulebook (known as the PRA Remuneration Code until the PRA and Financial Conduct Authority Remuneration Codes were split). Current remuneration rules, which seek to encourage greater alignment between risk and reward as well as more effective risk management, allow employers to withhold or reduce unpaid or unvested awards (i.e. the rules of malus) or recoup paid or vested awards (i.e. the rules of clawback). The practice of buy-outs could undermine these rules as employees could potentially evade being accountable for actions they carried out in their previous employment by moving to a new employer who buys-out their cancelled deferred remuneration. The PRA proposes that buy-out terms in contracts between new employers and employees should allow for malus or clawback to be applied following a notification by the old employer if an employee is found guilty of misconduct or risk management failings in his previous employment. The PRA is proposing to allow new employers to apply for a waiver for each employee if they believe the old employer's decision to apply malus or clawback was unfair or unreasonable. Responses to the consultation are due by April 13, 2016.

The consultation paper is available at: http://www.bankofengland.co.uk/pra/Documents/publications/cp/2016/cp216.pdf.

Competition

UK Parliament Treasury Committee's Letter to Bank of England on Challenger Banks

On January 18, 2016, a letter addressing possible competition issues between established and challenger banks dated October 7, 2015 sent from the Chairman of the Treasury Committee, Mr. Andrew Tyrie, addressed to the Deputy Governor for Prudential Regulation at the BoE, Mr. Andrew Bailey, was published. The letter refers to the potential difficulties challenger banks may face in satisfying the conditions required to use the Internal Ratings-Based approach for calculating credit risk. Mr. Tyrie is concerned that newer banks may be at a competitive disadvantage to more established banks, given that the IRB approach leads to lower capital requirements compared to the Standardized Approach which newer smaller banks would be able to use more easily. The letter asks whether: (i) the new corporation tax regime for banks encourages competition between new and established banks; (ii) adaptations made by the PRA to capital requirements for new banks will be effective in overcoming the competitive disadvantage that new banks may face; (iii) the PRA has plans to make further adjustments to capital or other requirements for new banks; (iv) the PRA is restricted, and if so, to what extent, from making further adjustments to newer banks' capital requirements under CRD IV or other EU legislation; and (v) there has been a reduction in requests for pre-application discussions with the PRA and FCA since the new tax regime was announced in July 2015.

The letter is available at: http://www.parliament.uk/documents/commons-committees/treasury/Correspondence/Letter-from-Andrew-Tyrie-Mp-to-Andrew-Bailey-on-'challenger-banks'-7-October-2015.pdf.

UK Competition and Markets Authority Extends Timetable for Investigation into Retail Banking Market

On January 29, 2016, the Competition and Markets Authority announced that it is likely to extend the timetable for its investigation into the retail banking market. A decision on the extension is expected to be taken in March 2016, when a timetable for publication of the final report will also be published. The report was originally scheduled for publication in February 2016. A provisional report, published in October 2015, identified several competition issues in the Personal Current Accounts and Small and Medium-sized Enterprises banking market, including: (i) small numbers of customers switching to different bank accounts, due to banks not being under sufficient competitive pressure to attract customers; (ii) new banks and new products not attracting new customers; and (iii) high numbers of SMEs holding their business accounts in the same banks as their PCAs, with low levels of switching. The CMA states that, further to its provisional findings, a number of new suggestions have been made for achieving better outcomes for current account customers and that it wishes to ensure that there is enough time to hear from interested parties so that all of the proposals can be considered properly.

The press release is available at: https://www.gov.uk/government/news/extension-to-cma-retail-banking-market-investigation and the CMA's provisional report is available at: http://finreg.shearman.com/uk-competition-and-markets-authority-proposes-rem.

Consumer Protection

European Supervisory Authorities Call on European Commission to Remedy Legal Discrepancies Identified in the EU Regulation of Cross-Selling of Financial Products

On January 27, 2016, the European Supervisory Authorities published a letter, dated January 26, 2016, from their Chairpersons to the European Commission on issues arising in the regulation and supervision of cross-selling financial products in the EU. The ESAs—ESMA, the EBA and the European Insurance and Occupational Pensions Authority—are responsible for preparing guidelines on the supervision of cross-selling of financial products for each of the securities, banking and insurance sectors. However, due to discrepancies between EU primary legislation which governs such cross-selling practices across the different sectors, the ESAs are unable to provide harmonized guidelines. The primary legislation includes the Mortgage Credit Directive, the Payment Accounts Directive, the Insurance Mediation Directive and the revised Markets in Financial Instruments Directive. Differences identified relate to the formal wording of the legislation, scope, level of granularity and date of application. The ESAs consider that a more harmonized approach across the sectors would be beneficial for consumers, financial institutions engaged in cross-selling and national regulators supervising the practice. The ESAs therefore urge the Commission to consider reviewing the

underlying legislation, including within the Commission's current consultations on Retail Financial Services in the Banking and Insurance Sectors and/or its Call for Evidence on the regulatory framework in financial services.

The ESA's letter is available at: https://www.esma.europa.eu/press-news/esma-news/esas-submit-joint-letter-european-commission-cross-selling-financial-products.

Corporate Governance

UK Regulator to Consult on Application of the Senior Manager Regime to a Firm's Legal Function

On January 27, 2016, the FCA published a statement on the application of the Senior Manager Regime to a firm's legal function. The SMR will come into effect on March 7, 2016. Firms are required, by February 8, 2016, to notify the FCA and the PRA of the individuals who are currently Approved Persons that will be transitioning to the new regime as Senior Managers. The FCA has become aware of significant uncertainty amongst firms as to whether an individual responsible for the firm's legal function would need to be approved as a Senior Manager. Where heads of legal are responsible for compliance there is a clear need to register, but the position is less clear for heads of legal who do not hold this additional function. The FCA intends to consult further on this issue. In the interim, the FCA advises that firms that have sought to make decisions in good faith about whether an individual needs approval in their firm for this responsibility, based on the current rules and guidance, should not need to change their approach.

The PRA is encouraging firms to submit their grandfathering notifications in advance of the February 8 deadline on the basis that some firms that have already submitted the forms have had to re-submit their applications.

The FCA statement is available at: http://www.fca.org.uk/news/supervisory-intentions-overall-responsibility-legal-function-under-senior-managers-regime and the PRA website is available at: http://www.bankofengland.co.uk/pra/Pages/supervision/strengtheningacc/default.aspx.

Credit Ratings

European Court of Auditors Publishes Report on European Securities and Markets Authority as Single Credit Rating Agencies Supervisor in the European Union

On February 1, 2016, the European Court of Auditors published a report on the role of ESMA as the single supervisor of Credit Rating Agencies in the European Union. The report covers the period from when ESMA took over the role of supervisor for CRAs from national regulators in July 2011 until September 2015. It aims to assess whether ESMA has effectively established itself as the CRA supervisory body for the EU. The report states that ESMA has set good foundations in a short amount of time, but that significant risks still need to be addressed in the future. The ECA recommends, amongst other things, that ESMA should: (i) document its assessment of all regulatory requirements for credit rating methodologies throughout the registration process; (ii) update its supervisory manual and handbook on a regular basis so as to take into account the knowledge and experience it has gained; (iii) contemplate developing further guidance on disclosure requirements to improve the methods of disclosure of CRAs; (iv) examine certain possible conflicts of interest in a structured manner, regarding rating analysts' trading activities and financial transactions, so as to mitigate the risk of insider trading; and (v) enhance the traceability of the risk identification process, documenting changes to risk level as well as the prioritization of risks and following up on high-risk areas that could benefit from further supervisory attention.

The report is available at: http://www.eca.europa.eu/Lists/ECADocuments/SR15_22/SR_ESMA_EN.pdf.

Cyber Security

US Federal Deposit Insurance Corporation Publishes Article Regarding Enhancing Banks' Cybersecurity Programs

On February 1, 2016, the FDIC published "A Framework for Cybersecurity" as part of the agency's Winter 2015 issue of "Supervisory Insights". The article addresses the current state of cyber threats and how financial institutions' information security programs can be modified to meet evolving cybersecurity risks. The publication also provides a summary of actions taken by the FDIC individually and with other regulators in response to the increase in cyber threats.

The latest issue of "Supervisory Insights" also includes articles on marketplace lending, recent lending conditions and risks as reported through the FDIC's Credit and Consumer Products/Services Survey, and an overview of recently released FDIC regulations and supervisory guidance.

The journal is available at: http://www.fdic.gov/regulations/examinations/supervisory/insights/index.html.

Derivatives

US Commodity Futures Trading Commission Grants Registration to 18 Swap Execution Facilities

On January 22, 2016, the CFTC granted permanent registration to 18 Swap Execution Facilities that trade interest rate swaps and credit default swaps, all of which were previously operating under temporary registration status. The SEFs approved for registration are: 360 Trading Networks Inc.; BGC Derivatives Markets, L.P.; Bloomberg SEF LLC; Chicago Mercantile Exchange Inc.; DW SEF LLC; GFI Swaps Exchange LLC; ICAP Global Derivatives Limited; ICAP SEF (US) LLC; ICE Swap Trade, LLC; Javelin SEF, LLC; LatAm SEF, LLC; MarketAxess SEF Corporation; SwapEx, LLC; Thomson Reuters (SEF) LLC; tpSEF Inc.; Tradition SEF, Inc.; trueEX LLC; and TW SEF LLC. The CFTC continues to review the registration of five remaining SEFs that are currently operating under temporary registration status.

More information regarding the CFTC-registered SEFs is available at: http://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=SwapExecutionFacilities.

US Commodity Futures Trading Commission Launches Whistleblower Program's Website

On January 21, 2016, the CFTC launched a new website to provide the public with information about whistleblower rights and protections, and to allow the public to submit tips about potential violations of the Commodity Exchange Act via the website. The website guides users through filing a tip and applying for an award and contains accessible information about the rules and regulations governing the CFTC's Whistleblower Program and related updates.

The press release is available at: http://www.cftc.gov/PressRoom/PressReleases/pr7312-16#PRBoxR1 and the website is available at: www.whistleblower.gov.

US Commodity Futures Trading Commission Oversight Extends No-Action Relief Regarding Masking Certain Reportable Identifying Information

On January 15, 2016, the CFTC's Division of Market Oversight extended no action relief originally provided in CFTC Letter 13-41, which was issued on June 28, 2013. CFTC Letter 13-41 permits Part 45 and Part 46 reporting counterparties to mask legal entity identifiers, and certain other enumerated identifiers and identifying terms, and permits Part 20 reporting entities to mask identifying information, in required reports in light of privacy, secrecy and blocking laws in certain jurisdictions. The CFTC previously extended this relief through CFTC Letter 15-01, and is now further extending relief, subject to certain conditions, until the earlier of March 1, 2017 and the date that the reporting party no longer holds the requisite reasonable belief that privacy law bars reporting.

The press release is available at: http://www.cftc.gov/PressRoom/PressReleases/pr7310-16.

US Commodity Futures Trading Commission Issues Order Delegating Certain Responsibilities to the National Futures Association

On January 14, 2016, the CFTC issued an order under the Commodity Exchange Act delegating to the National Futures Association certain reporting and administrative responsibilities, effective March 1, 2016. The NFA will receive, review and maintain notices of swap valuation disputes in excess of $20 million USD filed by swap dealers and major swap participants pursuant to CFTC regulation 23.502(c). The NFA will also be responsible for providing summaries and periodic reports related to these notices to the CFTC. The NFA is not authorized to render "no-action" positions, exemptions or interpretations with respect to applicable disclosure, reporting, recordkeeping and registration requirements.

The order is available at: http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/federalregister021416.pdf.

US Commodity Futures Trading Commission Approves Proposed Rule Offering Alternative to Fingerprinting for Foreign Natural Persons

On January 4, 2016, the CFTC proposed a rule offering an alternative to the requirement for foreign natural persons to provide fingerprints when applying for CFTC registration. The proposal provides that any such person's registered firm may complete a criminal history background check instead of submitting fingerprints. The proposal generally codifies CFTC Staff Letters 12-49 and 13-29 and would supersede those letters, if adopted. Comments on the proposed rule are due on or before February 11, 2016.

The CFTC press release is available at: http://www.cftc.gov/PressRoom/PressReleases/pr7302-16 and the proposed rule is available at: http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/federalregister010416.pdf.

European Securities and Markets Authority signs Memoranda of Understanding with South African and Mexican CCP Regulators

On January 26, 2016, ESMA published the Memoranda of Understanding it entered into with the Financial Services Board of South Africa and the Comisión Nacional Bancaria y de Valores of Mexico. The MoUs are established further to EMIR, under which ESMA is required to set out cooperation arrangements with non-EU authorities whose legal and supervisory framework for non-EU CCPs are deemed to be equivalent to European requirements. The MoUs provide ESMA with the tools to monitor the ongoing compliance of non-EU CCPs with the recognition conditions under EMIR. The MoUs are effective from November 30, 2015 and January 25, 2016 respectively.

The South African Memorandum of Understanding is available at: https://www.esma.europa.eu/sites/default/files/library/signed_mou_for_south_africa_fsb.pdf and the Mexican Memorandum of Understanding is available at: https://www.esma.europa.eu/sites/default/files/library/signed_mou_for_mexico_cnbv.pdf.

European Systemic Risk Board Assesses Risks Posed by CCP Interoperability Arrangements

On January 18, 2016, the ESRB published a report on the systemic risk implications of CCP interoperability arrangements which are governed by EMIR. There are currently five interoperable links in operation in the EU, including four authorized EU CCPs, a Swiss CCP and its Norwegian branch. The ESRB considers that the EU's current regulatory framework for interoperability is sound. However, the ESRB recommends that: (i) more regulatory granularity should be included in the framework to provide clarity for supervisors and regulators, to avoid regulatory arbitrage and to ensure a harmonized EU approach; (ii) the expected proposed legislation on CCP recovery and resolution should clarify the interaction of an interoperability arrangement with the default waterfall framework as well as portability and other default management measures; (iii) further analysis of the risks involved in interoperable arrangements for derivatives should be carried out; and (iv) the ESRB should be given a consultative role on the future development of any guidelines and rules on interoperability. ESMA recommended in February 2015 that the interoperability provisions in EMIR, which are limited to transferable securities and money-market instruments, should not be extended to OTC derivatives but could be extended to Exchange-Traded Derivatives. The European Commission must take the ESRB and ESMA reports into account when it prepares its report to the European Parliament and Council on the issue.

The ERSB report is available at: http://www.esrb.europa.eu/pub/pdf/other/2016-01-14_Interoperability_report.pdf?1df2a4ba465726ea9a9077fb61940c34.

Enforcement

UK Regulators to Investigate Former HBOS Senior Managers

On January 28, 2016, the PRA and FCA announced that they would be conducting an investigation into certain former senior managers of HBOS plc. This is the entity which resulted from merger of the Halifax Building Society and Bank of Scotland, which following financial failings was placed into state ownership in 2008. The decision follows the recommendations made by Andrew Green Q.C. in his final Report into the Financial Services Authority's enforcement actions following the failure of HBOS, in particular that the regulators should conduct investigations to determine whether any prohibition proceedings should be brought against the relevant individuals.

The PRA press release is available at: http://www.bankofengland.co.uk/publications/Pages/news/2016/025.aspx and the report of Andrew Green Q.C. is available at: http://finreg.shearman.com/final-report-on-the-enforcement-actions-following.

Six Individuals Found Not Guilty in the UK on Charges of Manipulating LIBOR

On January 27, 2016, five individuals (a former employee of Tullett Prebon Group Ltd, two former employees of ICAP Plc and two former employees of RP Martin Holdings Limited) were found not guilty of conspiracy to defraud in the Southwark Crown Court in connection with Yen LIBOR manipulation allegations. On January 29, 2016, a sixth individual, who was also a former employee of ICAP Plc, was found not guilty on two counts, one of which was also conspiracy to defraud. The UK Serious Fraud Office brought the charges. In particular, the SFO alleged that the individuals had conspired with another person to defraud. It was alleged that the defendants had, upon instruction from a former derivatives trader at UBS and Citigroup, agreed to influence the submissions of panel banks in the Yen LIBOR setting process. The former trader was convicted and sentenced last year for conspiracy to defraud. Further trials against other individuals relating to the manipulation of the US Dollar LIBOR and the EURIBOR are scheduled to begin in February 2016 and September 2017 respectively.

The SFO press release is available at: https://www.sfo.gov.uk/2016/01/29/libor-defendants-acquitted-update/.

UK Regulators Take Action against Three Firms and Five Individuals for Insurance Scheme Failures

On February 1, 2016, the FCA banned Mr. Shay Reches from performing any function in relation to a regulated activity and fined him £1,050,000. Mr. Reches also agreed to pay £13,130,000 to three insurers, which amount, if he fails to pay to them, will be added to the FCA's penalty. Mr. Reches was found to have undertaken regulated activities as a director at Coverall Worldwide Limited without being approved by the FCA and for recklessly directing insurance premium payments to parties other than the insurers or reinsures responsible for paying claims. His conduct contributed to the failure of several insurance schemes and to three insurers going into administration.

The FCA also took related action against four other individuals and two companies. The regulator fined Coverall, a UK insurance intermediary, £36,800 and revoked its authorization for failing to mitigate the risks to policyholders arising from the contracts entered into by its appointed representative, Aderia and for failing to establish and implement adequate controls over Aderia and to arrange adequate protection for client money. The FCA fined two directors at Coverall, Mr. Robert Bygrave and Ms. Andrea Sadler, and prohibited both of them from undertaking any FCA significant influence function.

A London based insurance broker, Bar (now in liquidation), which mostly provided solicitors' professional indemnity insurance, was censured for negligently failing to conduct adequate due diligence on insurance arrangements for policyholders and inducing customers to enter contracts of insurance on materially inaccurate and misleading information. Mr Redgrave, a broker and director at Bar, was fined £36,800 for being personally responsible for the failings of Bar.

Milburn, a UK insurance company, which is now in administration, was fined £1,137,500 for failing to deal with the FCA in an open and cooperative way and for failing to disclose information of which the FCA would reasonably expect notice of.
Mr McIntosh, the CEO of Milburn has had his approval withdrawn by the FCA and is banned from performing any controlled functions for failing to deal with the FCA in an open and cooperative way, failing to ensure that Coverall complied with

regulatory requirements and failing to mitigate the risks to potential solicitors' PII policyholders from contracts entered into by Aderia.

The PRA also banned Mr McIntosh from holding any controlled functions at any PRA-authorized firm and fined him £25,173 for failing to consider sufficiently the risks arising out of Millburn's substantial expansion in late 2010. The PRA found that Mr McIntosh had not taken reasonable steps to establish appropriate systems and controls to monitor underwriting, technical provisions, capital, reinsurance and financial reporting properly, which resulted in policyholders not obtaining the protection they were reasonably entitled to. The PRA also fined Millburn £2,863,066 for failing to run the business with due skill, care and diligence between December 2010 and September 2013. This was further to Milburn changing its business strategy in late 2010 so that it could be marketed for sale.

The FCA press release and final notices are available at: http://www.fca.org.uk/news/fca-takes-disciplinary-action-against-five-individuals-and-three-firms and the PRA press release and final notice are available at: http://www.bankofengland.co.uk/publications/Pages/news/2016/027.aspx

UK Regulator Bans Two Former Co-operative Bank Senior Managers

On January 15, 2016, the PRA published two Final Notices: one for Barry Tootell, former Chief Executive Officer of the Co-operative Bank Plc and another for Keith Alderson, former Managing Director of the bank's Corporate and Business Banking Division. The PRA has prohibited both individuals from holding significant influence functions in a PRA-authorized firm on the basis that neither is fit and proper. The PRA found that both Mr. Tootell and Mr. Alderson had failed to exercise due skill, care and diligence (breach of Principle 6 of the Code of Practice for Approved Persons) between 2009 and 2013. In addition, both individuals had been knowingly concerned in the Co-operative Bank's failure to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems (contravention of Principle 3 of the Principles for Business).

The PRA said that Mr. Tootell had been involved in a culture within the bank that prioritized the short-term financial position of the bank, giving less regard to prudent conduct and sustainable actions that could have been taken to protect the firm's longer-term capital position. Following the bank's merger with Britannia in August 2009 and until October 2012, Mr. Tootell was responsible for the Co-operative Banking Risk team. The PRA considered that he did not take the necessary steps to ensure that the team was structured and organized well enough to provide adequate guidance to the first line business of the bank. The PRA believed that if Mr. Tootell, who as CEO was significantly involved in the managing of the bank's finances and capital position, had remained within the bank's own stated cautious risk appetite, structured the Banking Risk team in a better way and discussed key issues in a timely manner with the Board, the bank could have dealt with the issues it had faced more effectively and in a more timely manner.

The PRA found that Mr. Alderson had not assessed the risk arising from the Britannia Corporate Loan Book adequately and had not escalated or made sufficiently clear certain risks that were found to be inherent in the Loan Book. Those risks were therefore not appropriately considered and mitigating actions were not taken. In addition, Mr. Alderson had not ensured that the impairment budgets and forecasts were always set according to an assessment of risks. He challenged staff on their proposed levels of impairment and this, together with the bank's culture, brought about an environment in which staff felt pressurized into meeting previously set impairment forecasts, leading to a more optimistic view on impairment positions.

No claims of dishonesty or lack of integrity were made against either individual and neither had breached regulatory provisions deliberately or in a reckless way. In addition to the prohibitions, Mr. Tootell and Mr. Alderson were fined £173,802 and £88,890 respectively.

The PRA and FCA publicly censured the Co-operative Bank in August 2015, following their joint investigation into serious breaches and failings in the bank's systems. The regulators found, amongst other things, that the bank had: (i) inadequately assessed the level of risk it assumed, leading to a failure to manage that risk; (ii) mismanaged the information that it produced,

leading to the bank's Board not being familiar with key issues affecting the bank's business; and (iii) prioritized its short-term financial position without taking reasonable and prudent actions for the longer-term.

The objective of the incoming Senior Managers Regime is to encourage senior individuals to take greater accountability for their actions and make it easier for regulators to hold senior individuals to account. The Regime, which will apply to UK banks, building societies, credit unions and PRA-designated investment firms as well as branches of those firms, comes into effect on March 7, 2016.

The Final Notice for Barry Tootell is available at: http://www.bankofengland.co.uk/pra/Documents/supervision/enforcementnotices/en150116a.pdf and the Final Notice for Keith Alderson is available at: http://www.bankofengland.co.uk/pra/Documents/supervision/enforcementnotices/en150116b.pdf.

The PRA's Final Notice for the Co-operative Bank is available at: http://www.bankofengland.co.uk/pra/Documents/supervision/enforcementnotices/en110815.pdf and the FCA's Final Notice for the Co-operative Bank is available at: http://www.fca.org.uk/static/documents/final-notices/the-co-operative-bank-plc-2015.pdf.

Financial Crime

Consultation on Proposed Guidelines under the EU Market Abuse Regulation Launched

On January 28, 2016, ESMA published proposed Guidelines under the Market Abuse Regulation. The consultation paper covers proposed Guidelines addressed to persons receiving a market sounding and Guidelines for issuers and emission allowance market participants on delaying disclosure of inside information. The MAR will apply directly across the EU from July 3, 2016. The proposed Guidelines for persons receiving a market sounding set out: (i) the factors that the recipient must take into account when information is disclosed to them as part of a market sounding for them to assess whether the information is inside information; (ii) the steps that a recipient should take into account when information is disclosed to them in order to comply with MAR; and (iii) the records a recipient needs to maintain to demonstrate their compliance with MAR. ESMA has already submitted final draft technical standards to the European Commission on market soundings. These technical standards are yet to be adopted into EU law. ESMA's proposed Guidelines may need to be changed depending on the final form of those technical standards as ESMA has based the proposed Guidelines on the standards.

ESMA's second set of proposed Guidelines cover the legitimate interests of issuers and emission allowance market participants to delay the disclosure of inside information and situations in which the delay of disclosure is likely to mislead the public. Under MAR, issuers are required to inform the public as soon as possible of information which directly concerns the issuer. However, such disclosure may be delayed if certain criteria are met, including that the delay protects a legitimate interest of the issuer, that the information remains confidential and that procedures are put in place to ensure this is the case. ESMA's proposed Guidelines include a non-exhaustive list of the legitimate interests of an issuer that may be prejudiced by immediate disclosure of inside information and situations in which delay of disclosure is likely to mislead the public. Responses to the consultation are due by March 31, 2016. ESMA is expected to finalize the Guidelines by early Q3 2016.

ESMA's consultation paper is available at: https://www.esma.europa.eu/press-news/esma-news/esma-consults-mar-guidelines-regarding-market-soundings-and-delayed-disclosure and ESMA's final draft technical standards are available at: http://finreg.shearman.com/european-securities-an-markets-authority-publis.

Financial Market Infrastructure

US Office of Financial Research 2015 Annual Report to Congress Notes Increased Threats to Financial Stability

On January 27, 2016, the US Office of Financial Research issued its 2015 Annual Report to Congress. Among other things, the report states that threats to US financial stability have "edged higher" since last year's report, but remain in the moderate range.

According to the OFR, that assessment has not changed since the Federal Reserve Board incrementally increased short-term interest rates in December. Additional OFR findings highlighted in the report include how policymakers have taken important steps to eliminate implied taxpayer support for large, complex financial institutions whose serious distress could threaten financial stability. Furthermore, the report notes that while clearing derivatives trades through central counterparties has significant benefits in reducing the risks to counterparties of default, a CCP can also be a single point of vulnerability for failure and creates the potential for propagation of risks.

The OFR Annual Report to Congress is available at: https://financialresearch.gov/annual-reports/files/office-of-financial-research-annual-report-2015.pdf.

Financial Services

New York State Department of Financial Services Extends Comment Period on Anti-Money Laundering Proposal

On January 28, 2016, the New York State Department of Financial Services announced that it is extending the comment period to March 31, 2016, for its proposed anti-terrorism and anti-money laundering regulation, known as the Transaction Monitoring and Filtering Program.

The regulation, proposed on December 1, 2015, requires maintenance by each regulated institution of: (i) a transaction monitoring program for the purpose of monitoring transactions after their execution for potential BSA/AML violations and suspicious activity reporting; and (ii) a watch list filtering program to prevent transactions, before their execution, that are prohibited by applicable sanctions, including OFAC and other sanctions lists, politically exposed persons lists and internal watch lists. The proposed regulation also includes an annual certification requirement under which senior financial executives must certify that their institutions have necessary systems in place to identify and prevent illicit transactions.

The proposed Transaction Monitoring and Filtering Program regulation is available at: http://www.dfs.ny.gov/legal/regulations/proposed/rp504t.pdf.

US Securities and Exchange Commission Reopens Comment Period for Access to Data Obtained by Security-Based Swap Data Repositories

On January 15, 2016, the SEC reopened the comment period for proposed amendments to rule 13n-4 of the Securities Exchange Act of 1945. The Dodd-Frank Act added sections 13(n)(5)(G) and (H) to the Exchange Act, requiring security-based swap data repositories to make data available to certain regulators and other entities, subject to certain conditions. The SEC proposed rules to implement those data access conditions on September 14, 2015. As part of the Surface Transportation Reauthorization and Reform Act of 2015 (Public Law 114 94) signed into law on December 4, 2015, certain of those conditions were revised, including, most notably, eliminating a requirement that the recipient of such data agree to indemnify the swap data repository and SEC for expenses arising from litigation relating to the information provided. The law also clarified that the data access was limited to security-based swap data, and not all data maintained by the repository, and added "other foreign authorities" to the list of entities that the SEC may determine it is appropriate to provide access to. Comments may be submitted for 30 days, following the publication of the proposed amendments in the Federal Register.

The proposed amendments are available at: https://www.sec.gov/rules/proposed/2016/34-76922.pdf.

UK Regulator Consults on Segregation of Client Money for Loan-Based Crowdfunding Platforms

On January 21, 2016, the FCA issued a consultation paper on loan-based crowdfunding platforms and the segregation of client money. Current FCA client money rules (CASS 7) require that investor monies held by a firm under a Peer to Peer agreement (i.e. money that is to be lent or received in repayments) is segregated from the firm's own money. Money relating to unregulated Business-to-Business lending (i.e. B2B agreements) must also be segregated from investor monies held by a firm (but not from the firm's own money). The FCA's proposals would allow firms to hold client monies in relation to both P2P and B2B agreements together. This change would be less burdensome to firms, as some do not have systems in place that can distinguish

between monies held for P2P and B2B agreement purposes. Firms would then be able to segregate P2P and B2B monies from the firm's money, but keep them together, without breaking the FCA rules. Responses to the consultation are due by February 11, 2016.

The consultation paper is available at: http://www.fca.org.uk/static/documents/cp16-04.pdf.

UK Regulators Announce New Bank Start-Up Unit

On January 20, 2016, the PRA and FCA announced the launch of their new joint initiative, the New Bank Start-up Unit, which will provide information and support to newly authorized banks and those wishing to become a new bank in the United Kingdom. This initiative will help new banks through the regulatory authorization process via the use of dedicated PRA or FCA staff members, a dedicated website, helpline and email address. Case officers will be allocated to firms during the authorization process. The PRA and FCA have also published a guide on the New Bank Start-up Unit which includes useful information for those aiming to set up a bank.

The Guide is available at: http://www.bankofengland.co.uk/pra/Documents/authorisations/newfirmauths/nbsuguide.pdf.

International Central Bank Committees Report on Structure and Liquidity of Fixed Income Markets

On January 21, 2016, two international central bank committees published reports on the structure and liquidity of fixed income markets. The Committee on the Global Financial System's report is on fixed income market liquidity whilst the Markets Committee paper is on electronic trading in fixed income markets. The CGFS report identifies liquidity conditions to be prone to disruptions, with signs of fragility, as fixed income markets are seen to be in a period of transition following the effects of ongoing regulatory, technology and market structure changes. The report states that whilst it is difficult to identify the drivers of such fragility, the changes could be due to: (i) a rise in algorithmic trading in fixed income markets; (ii) banks reducing their trading-related exposures in response to lower risk appetite; and (iii) crowded trades and one-sided risk expectations for market participants. The Markets Committee report focuses on the rise in algorithmic trading, which tends to facilitate the matching of buyers and sellers and in turn usually improves market quality, but can also result in liquidity conditions that are less resilient in times of stress.

The CGFS report is available at: http://www.bis.org/publ/cgfs55.pdf and the Markets Committee report is available at: http://www.bis.org/publ/mktc07.pdf.

Funds

European Commission Requests Further Advice on Extension of EU Passport under Alternative Investment Fund Managers Directive

On January 19, 2016, ESMA published a letter from the European Commission, dated December 17, 2015, on ESMA's advice and opinion on the passport under the Alternative Investment Fund Managers Directive. ESMA advised the Commission in July 2015 on the extension of the EU passport under the AIFMD to managers and funds in to Guernsey, Jersey and Switzerland but advised that due to a lack of evidence for Singapore, Hong Kong and the US, it was unable to provide assessments for those jurisdictions. In the letter, the European Commission asks ESMA to provide an assessment for the US, Hong Kong, Singapore, Japan, Canada, Isle of Man, Cayman Islands, Bermuda and Australia by June 30, 2016. In addition, the Commission requests that ESMA provides: (i) a more detailed assessment of the capacity of third country supervisory authorities and their enforcement track record; and (ii) a preliminary assessment of the expected inflow of funds by type and size into the EU from the relevant third countries. The Commission concurs that a further opinion from ESMA on the functioning of the EU passport under the AIFMD and on the operation of the National Private Placement Regime is warranted once the AIFMD has been transposed into all of the Member States. It is noted that such an opinion would be useful ahead of the review of the AIFMD planned for 2017.

The Commission's letter is available at: https://www.esma.europa.eu/press-news/esma-news/esma-publishes-letter-european-commission-aifmd-passport.

People

Governor of New York Appoints New Superintendent of New York Department of Financial Services

On January 21, 2016, Ms. Maria T. Vullo was nominated by New York Governor Mr. Andrew M. Cuomo to serve as the Superintendent of the New York State Department of Financial Services.

The press release is available at: https://www.governor.ny.gov/news/governor-cuomo-nominates-maria-vullo-superintendent-new-york-state-department-financial.

European Securities and Markets Authority Appoints New Vice Chair

On January 28, 2016, ESMA announced that it appointed Ms. Anneli Tuominen as its Vice Chair, replacing Mr. Carlos Tavares, who has completed his term.

The press release is available at: https://www.esma.europa.eu/sites/default/files/library/2016-167_anneli_tuominen_appointed_vice_chair_of_esma.pdf.

UK Payment Systems Regulator Appoints New Head of Policy

On January 27, 2016, the Payment Systems Regulator announced the appointment of Mr. Paul Smith as its Head of Policy from February 1, 2016.

The press release is available at: https://www.psr.org.uk/psr-publications/news-announcements/psr-appoints-new-head-of-policy.

UK Regulator Appoints New Non-Executive Board Members

On January 26, 2016, the FCA announced that it has appointed four new non-executive FCA Board members as of April 1, 2016. The new members are Mr. Bradley Fried, Ms. Ruth Kelly, Baroness Sarah Hogg and Mr. Tom Wright CBE.

The press release for Mr. Bradley Fried is available at: http://www.fca.org.uk/about/structure/board/bradley-fried; the press release for Ms. Ruth Kelly is available at: http://www.fca.org.uk/about/structure/board/ruth-kelly; the press release for Baroness Sarah Hogg is available at: http://www.fca.org.uk/about/structure/board/baroness-sarah-hogg and the press release for Mr. Tom Wright CBE is available at: http://www.fca.org.uk/about/structure/board/tom-wright.

UK Regulator Appoints New Chief Executive Officer

On January 26, 2016, the BoE issued a press release announcing that Mr. Andrew Bailey has been appointed as the new Chief Executive Officer of the FCA. In his new role at the FCA, Mr. Bailey will be a member of the PRA Board and Financial Policy Committee. Mr. Bailey will remain in his role at the PRA as CEO and Deputy Governor and will leave his role as Deputy Governor of Prudential Regulation at the BoE only once a successor has been appointed.

The PRA press release is available at: http://www.bankofengland.co.uk/publications/Pages/news/2016/024.aspx.

Upcoming Events

February 5, 2016: EBA 5th Anniversary Conference (by invitation only).

February 7-10, 2016: National Interagency Community Reinvestment Conference in Los Angeles sponsored by the US federal bank regulatory agencies, the Federal Reserve Bank of San Francisco and the Community Development Financial Institutions Fund (registration closed).

February 11, 2016: US Senate Committee on Banking, Housing and Urban Affairs meeting in open session to conduct a hearing entitled “The Semiannual Monetary Policy Report to the Congress”. The witness will be the Honorable Janet L. Yellen, Chair, Federal Reserve Board.

February 16, 2016: EBA Open Hearing on Guidelines on Collection of Information for the Internal Capital Adequacy Assessment Process and Internal Liquidity Adequacy Assessment Process (registration closed).

February 18, 2016: EBA Public Hearing on Guidelines on Implicit Support (registration closed).

February 19, 2016: EBA Public Hearing on Draft Technical Standards under the Interchange Fee Regulation (registration closed).

March 2, 2016: European Commission Public Hearing on Green Paper on Retail Financial Services.

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

Upcoming Consultation Deadlines

February 4, 2016: FCA Consultation on Implementation of Market Abuse Regulation.

February 5, 2016: Basel Committee Consultation on Capital Requirements for Simple, Transparent and Comparable Securitizations.

February 8, 2016: EBA Discussion Paper on RTS for Strong Customer Authentication and Secure Communication under the Revised Payment Services Directive.

February 8, 2016: PRA and FCA Consultation on Changes to Notification Rules and Forms under the Senior Managers and Certification Regimes.

February 10, 2016: EBA Consultation on Common Procedures for Information Exchange between National Regulators on Proposed Acquisitions.

February 11, 2016: CFTC Proposed Rule on an Alternative to the Requirement for Foreign Natural Persons to Provide Fingerprints when Applying for CFTC Registration.

February 11, 2016: FCA Consultation on Segregation of Client Money for Loan-Based Crowdfunding Platforms.

February 12, 2016: Basel Committee Consultation on TLAC Holdings.

February 19, 2016: Federal Reserve Board Proposed Rule on TLAC.

February 19, 2016: ESMA Discussion Paper on Validation and Review of Credit Rating Agencies Methodologies.

February 20, 2016: FCA Consultation on Amending Guidance on Delaying Disclosure of Inside Information.

February 22, 2016: CFTC Draft Technical Specifications for Certain Swap Data.

February 23, 2016: Committee on Payments and Market Infrastructures and International Organization of Securities Commissions Consultation on Cyber Resilience.

February 25, 2016: UK Government Proposed Changes for Implementation of Bank Recovery and Resolution Directive.

March 4, 2016: ESAs Discussion Paper on Automation in Financial Advice.

March 8, 2016: EBA Consultation on draft RTS on Separation of Payment Card Schemes and Processing Entities under the Interchange Fee Regulation.

March 8, 2016: EBA Consultation on Draft ITS Amending Regulation on Supervisory Reporting of Institutions and Financial Reporting.

March 8, 2016: FCA First Consultation on the Implementation of MiFID II.

March 11, 2016: EBA Consultation on Guidelines on the Collection of Information for the Internal Capital Adequacy Assessment Process and Internal Liquidity Adequacy Assessment Process.

March 11, 2016: EBA Consultation on Draft RTS on Information Sharing Between National Regulators under Revised Payment Services Directive.

March 11, 2016: BoE Consultation on its Approach to Setting MREL.

March 11, 2016: PRA Consultation on Minimum Required Eligible Liabilities – Buffers and Threshold Conditions.

March 11, 2016: PRA Consultation on Ensuring Operational Continuity in Resolution.

March 11, 2016: Basel Committee Consultation on Revised Standardized Approach to Credit Risk.

March 13, 2016: EBA Consultation on Draft RTS on Assessment Methodology for Use of Internal Models for Market Risk.

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

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

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

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

March 31, 2016: ESMA Consultation on Proposed Guidelines under Market Abuse Regulation.

March 31, 2016: NYDFS proposed Transaction Monitoring and Filtering Program.

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
T: +44 20 7655 5528
barney.reynolds@shearman.com
London

REENA AGRAWAL SAHNI
T: +1 212 848 7324
reena.sahni@shearman.com
New York

RUSSELL D. SACKS
T: +1 212 848 7585
rsacks@shearman.com
New York

THOMAS DONEGAN
T: +44 20 7655 5566
thomas.donegan@shearman.com
London

DONNA M. PARISI
T: +1 212 848 7367
dparisi@shearman.com
New York

NATHAN J. GREENE
T: +1 212 848 4668
ngreene@shearman.com
New York

GEOFFREY B. GOLDMAN
T: +1 212 848 4867
geoffrey.goldman@shearman.com
New York

JOHN ADAMS
T: +44 20 7655 5740
john.adams@shearman.com
London

CHRISTINA BROCH
T: +1 202 508 8028
christina.broch@shearman.com
Washington, DC

AYSURIA CHANG
T: +44 20 7655 5792
aysuria.chang@shearman.com
London

MAK JUDGE
T: +65 6230 8901
mak.judge@shearman.com
Singapore

JENNIFER D. MORTON
T: +1 212 848 5187
jennifer.morton@shearman.com
New York

KOLJA STEHL
T: +49 69 9711 1623
kolja.stehl@shearman.com
Frankfurt / London

MARTYNA BUDZYNSKA
T: +44 20 7655 5816
martyna.budzynska@shearman.com
London

TOBIA CROFF
T: +39 02 0064 1509
tobia.croff@shearman.com
Milan

HERVÉ LETRÉGUILLY
T: +33 1 53 89 71 30
hletreguilly@shearman.com
Paris

BILL MURDIE
T: +44 20 7655 5149
bill.murdie@shearman.com
London

ELLERINA TEO
T: +44 20 7655 5070
ellerina.teo@shearman.com
London

TIMOTHY J. BYRNE
T: +1 212 848 7476
tim.byrne@shearman.com
New York

ANNA DOYLE
T: +44 20 7655 5978
anna.doyle@shearman.com
London

OLIVER LINCH
T: +44 20 7655 5715
oliver.linch@shearman.com
London

BRADLEY K. SABEL
T: +1 212 848 8410
bsabel@shearman.com
New York

JAMES CAMPBELL
T: +44 20 7655 5570
james.campbell@shearman.com
London

SYLVIA FAVRETTO
T: +1 202 508 8176
sylvia.favretto@shearman.com
Washington, DC

BEN MCMURDO
T: +44 207 655 5906
ben.mcmurdo@shearman.com
London

JENNIFER SCOTT
T: +1 212 848 4573
jennifer.scott@shearman.com
New York