SHEARMAN & STERLING LLP

FINANCIAL INSTITUTIONS ADVISORY & FINANCIAL REGULATORY GROUP NEWSLETTER

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Financial Regulatory Developments Focus

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.

Click here if you wish to access our Financial Regulatory Developments website.

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Bank Prudential Regulation & Regulatory Capital

Federal Reserve Board Requests Comments Regarding Proposed Call Report Revisions

On January 2, 2018, the U.S. Board of Governors of the Federal Reserve System requested comment regarding revisions to the FR Y-9C, FR Y-9LP, FR Y-9SP, FR Y-9ES and FR Y-9CS call reports for holding companies. The notice requests comment with respect to, among other things, the utility of the reports, the accuracy of agency assumptions with regard to the burden imposed by the data collection activities, and means to enhance the quality of information collected or reduce the burden of the information collection activities. The proposed revisions include deletions or combination of certain sections of the reports, reducing the reporting frequency and increasing/adding reporting thresholds for certain data items.

Comments to the Federal Reserve Board's proposed revisions are due March 5, 2018.

The Federal Reserve Board's notice and request for comment is available at: https://www.gpo.gov/fdsys/pkg/FR-2018-01-02/pdf/2017-28290.pdf.

US Banking Agencies Update Community Reinvestment Act Thresholds for Small and Intermediate Small Institutions

On December 21, 2017, the U.S. Board of Governors of the Federal Reserve System, the U.S. Office of the Comptroller of the Currency and the U.S. Federal Deposit Insurance Corporation announced technical amendments to the asset thresholds used to define small banks and saving associations and intermediate small banks and savings associations under the Community Reinvestment Act. These adjustments, which occur annually, are required under the CRA and based upon changes to the Consumer Price Index for Urban Wage Earners and Clerical Workers. Under the adjusted threshold, a "small institution" will be any institution that had assets of less than $1.252 billion as of December 31 of either of the last two years. The definition of "intermediate small institution" will be updated to include institutions with at least $313 million as of December 31 of each of the last two years, and assets of less than $1.252 billion as of December 31 of either of the last two years.

The updated definitions took effect on January 1, 2018.

The interagency final rule is available at: https://www.occ.treas.gov/news-issuances/news-releases/2017/nr-ia-2017-151a.pdf.

Changes to Shared National Credit Program Provides Regulatory Relief to 82 Financial Institutions

On December 21, 2017, the U.S. Board of Governors of the Federal Reserve System, the U.S. OCC, and the FDIC announced an increase in the aggregate loan commitment threshold for an institution to be included in the Shared National Credit program. The agencies noted that the increase from $20 million to $100 million reflects changes in average loan size and adjustments for inflation. In their joint release, the agencies noted that this change will bring regulatory relief to 82 financial institutions, while only nominally reducing the dollar amount of loans evaluated under the Shared National Credit program.

The joint agency press release is available at: https://www.occ.treas.gov/news-issuances/news-releases/2017/nr-ia-2017-152.html.

OCC and FDIC Announce Examiner Guidance Regarding Mortgage Disclosure Act Data Collection

On December 21, 2017, the U.S. OCC and the FDIC issued statements providing guidance for examiners with respect to data collection by financial institutions pursuant to Regulation C, which implements the Home Mortgage Disclosure Act. In the statements, both agencies noted the regulatory and compliance challenges financial institutions face due to amendments to Regulation C made by the U.S. Consumer Financial Protection Bureau, which took effect on January 1, 2018. To address these challenges, the agencies announced that they will not require resubmission of HMDA data

collected in 2018 and reported in 2019 unless there are material errors. The OCC and FDIC further noted that they do not intend to assess any penalties with respect to errors in data that is collected in 2018 and reported in 2019.

The OCC bulletin is available at: https://www.occ.treas.gov/news-issuances/bulletins/2017/bulletin-2017-62.html and the statement by the FDIC is available at: https://www.fdic.gov/news/news/financial/2017/fil17063a.pdf.

US House of Representatives Approves Bipartisan Bill to Modify Systemically Important Financial Institution Designation

On December 19, 2017, the U.S. House of Representatives voted 288-130 in favor of the Systemic Risk Designation Improvement Act of 2017 (H.R. 3312). The bill, introduced on July 19, 2017 and sponsored by Representative Blaine Luetkemeyer, removes the $50 billion asset-threshold under the Dodd-Frank Act. In place of this automatic designation, certain Dodd-Frank provisions will now apply only to institutions designated as global systemically important bank holding companies and other bank holding companies that have been designated by the U.S. Board of Governors of the Federal Reserve System as warranting enhanced supervision and/or enhanced prudential standards.

The full text of H.R. 3312 is available at: https://www.congress.gov/bill/115th-congress/house-bill/3312/text.

Federal Reserve Board Repeals Regulation C and Proposes Revisions to Regulation M

On December 18, 2017, the U.S. Board of Governors of the Federal Reserve System announced publication of a final rule repealing Regulation C. This regulation had been promulgated to implement provisions under the Home Mortgage Disclosure Act. However, pursuant to the Dodd-Frank Act, all rulemaking authority under the HMDA was transferred to the CFPB. The CFPB implemented its own Regulation C in 2016, after publishing an interim final rule in 2011. The repeal of the Federal Reserve Board's Regulation C is effective January 22, 2018. On the same day, the Federal Reserve Board also published a notice of proposed rulemaking and request for public comment regarding revisions to Regulation M, which implements the Consumer Leasing Act. Similar to Regulation C, most, but not all, of the Federal Reserve Board's rulemaking authority under the CLA was transferred to the CFPB under Dodd-Frank. As such, the Federal Reserve Board's proposal seeks to tailor Regulation M to reflect only the rulemaking authority under the CLA still vested with the Federal Reserve Board. Comments to the proposal are due March 5, 2018.

The Federal Reserve Board's final rule repealing Regulation C is available at: https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20171218a1.pdf and the notice of proposed rulemaking regarding Regulation M is available at: https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20171218a2.pdf.

Federal Reserve Board Finalizes Revisions to Components of CCAR and DFAST

On December 15, 2017, the U.S. Board of Governors of the Federal Reserve System announced the finalization of revisions to certain aspects of its Comprehensive Capital Analysis and Review (CCAR) and Dodd-Frank Act Stress Test (DFAST) programs. The Federal Reserve Board had originally requested public comment on modifications to the information collected as part of the FR Y–14A/Q/M reports applicable to bank holding companies with total consolidated assets of $50 billion or more and U.S. intermediate holding companies on June 9, 2017. As finalized, the "global market shock" component of CCAR will now include firms that (i) are not "large and noncomplex firms" under the Federal Reserve Board's capital plan rule and (ii) that have aggregate trading assets and liabilities of $50 billion or more, or aggregate trading assets and liabilities equal to 10 percent or more of total consolidated assets. Notably, this would include certain U.S. intermediate holding companies of foreign banking organizations. Firms that were not previously subject to the global market shock component will not be subject to the requirement until the 2019 CCAR/DFAST cycle. The revisions also result in an elimination or modification of certain schedules to the FR Y-14A/Q/M reports, including clarifying certain aspects of the reports.

Under the initial request for comment, certain of these changes would take effect on September 31, 2017 or December 31, 2017, although the Federal Reserve Board's final announcement extends the effective date for a number of these revisions to December 31, 2017 or March 31, 2018.

The Federal Reserve Board's notice is available at: https://www.gpo.gov/fdsys/pkg/FR-2017-12-15/pdf/2017-26960.pdf.

US Financial Stability Oversight Council Releases Its 2017 Annual Report

On December 14, 2017, the U.S. Financial Stability Oversight Council published its 2017 annual report. The report addresses topics such as financial and regulatory developments and potential emerging threats and vulnerabilities, and makes a number of recommendations with respect to these topics. The report notes that market conditions have been relatively stable over the last year, and discusses the FSOC's rescission of its designation of two nonbank financial institutions for supervision by the U.S. Board of Governors of the Federal Reserve System—American International Group, Inc. and General Electric Capital Corporation, Inc. One key issue in the report is the continuing and growing threat that cybersecurity risks pose to the financial system. The report notes that although progress has been made in this area, more work is required to guard against significant cybersecurity events in the future. The report also discusses FinTech initiatives, both in the context of how innovation is changing financial market structure and financial products. The report notes that while these innovations can provide great benefits, they also create new risks to, and potential vulnerabilities in, the financial system.

The FSOC report is available at: https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC_2017_Annual_Report.pdf.

New EU Securitization Framework Published

On December 28, 2017, two new EU Regulations introducing the new EU securitization framework for simple, transparent and standardized securitizations have been published in the Official Journal of the European Union—the STS Regulation and a Regulation amending the existing Capital Requirements Regulation. The two Regulations implement the Basel Committee on Banking Supervision's amended Securitization Framework for alternative regulatory capital treatment for simple, transparent and comparable securitizations in 2014 as part of Basel III.

The STS Regulation provides the criteria for identifying which securitizations will be designated as STS securitizations, a system to monitor the application of those criteria as well as common requirements on risk retention, due diligence and disclosure. Originators and sponsors will be required to notify the European Securities and Markets Authority of any securitization that meets the STS criteria and ESMA will maintain a list of all such securitizations on its website. The STS 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.

In addition, SSPEs, originators and sponsors of a securitization will be required to make certain information available via a securitization repository to holders of a securitization position, to the national regulators and, upon request, to potential investors. Those securitization repositories will be subject to certain operational standards and access to the data held by them is subject to certain conditions being met.

The STS Regulation requires, among other things, originators, sponsors or original lenders of a securitization to retain on an ongoing basis a material net economic interest in the securitization of at least 5 %. It also includes an exemption, subject to certain criteria being met, from the clearing obligation for OTC derivative contracts entered into by covered bond entities and SSPEs.

The STS Regulation will apply directly across the EU from January 1, 2019 to securities issued under securitizations on or after January 1, 2019. Securitizations issued before that date may be referred to as STS securitizations provided that they meet certain conditions.

The Regulation amending the CRR sets out the preferential regulatory treatment of exposures to securitizations for investors, in particular, for bank investors, that are deemed to be STS securitizations. The amending Regulation will apply directly across the EU from January 1, 2019. For securitizations issued before January 1, 2019, the existing CRR provisions will apply until December 31, 2019.

The STS Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2402&from=EN.

The CRR Amendment Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2401&from=EN.

EU Transitional Arrangements for IFRS and Large Exposures

On December 27, 2017, an EU Regulation amending the CRR as regards transitional measures for mitigating the impact of the introduction of International Financial Reporting Standards (known as IFRS 9) has been published in the Official Journal of the European Union. IFRS 9, which applies for accounting periods beginning January 1, 2018, will require the measurement of impairment loss allowances to be based on an expected credit loss accounting model rather than on an incurred loss accounting model. The amending Regulation allows banks and investment firms that are required to use IFRS 9 to apply transitional provisions where the application of IFRS 9 leads to a significant increase in credit loss provisions and a decrease in the firm's Common Equity Tier 1 capital. A firm that uses the transitional arrangements must publicly disclose their own funds, capital ratios and leverage ratios with and without the application of those arrangements.

The amending Regulation also provides for transitional arrangements for the exemption from the large exposure limit available for exposures to certain public sector debt of Member States denominated in the currency of that Member State. A transitional period of three years from January 1, 2018, will apply to these exposures incurred on or after December 12, 2017. Exposures incurred before that date will continue to be exempt from the large exposures requirements.

The amending Regulation applied directly across the EU from January 1, 2018.

The CRR IFRS Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2395&from=EN.

EU Proposals for an Amended Prudential Regime for Investment Firms

On December 20, 2017, the European Commission published legislative proposals to amend the EU framework on the prudential supervision of investment firms. The proposals follow the European Banking Authority's Opinion on revising the regime published in September 2017. The aim of the proposals is to tailor the prudential requirements and supervisory arrangements to the risk profile and business models of investment firms.

The Commission's proposals maintain the EBA's recommendation for three different categories of investment firm:

(i) Class 1 firms: systemic "bank-like" firms which would remain within the scope of the EU Capital Requirements Directive and CRR but would become subject to the same treatment as credit institutions under this legislation. Firms which will fall within this class will be those which deal on own account or which carry out underwriting or placing on a firm commitment basis or which have a total value of assets over EUR30 billion. Class 1 firms will be brought within the definition of a credit institution in the CRR and will need to obtain authorization as credit institutions. Most of these

firms are currently located in the United Kingdom. The Commission is also proposing that the equivalence assessment for third countries which host large systemically important investment firms will need to be very detailed and granular.

(ii) Class 2 firms: a middle category for a majority of firms that are not systemic but do pose risks which would be subject to a tailored prudential regime which includes governance arrangements and remuneration rules in addition to those provided for in the Markets in Financial Instruments Directive and Regulation. The remuneration rules will allow firms to choose between the types of instruments used to pay out part of the variable remuneration and the deferral and pay-out instrument requirements will not apply to firms with less than EUR100 million in total assets.

(iii) Class 3 firms: small firms which are not interconnected and which only provide limited services would only be subject to a very simple regime. These firms will have a minimum capital requirement that matches the level of initial capital required for authorization or a quarter of their fixed costs for the previous year, whichever is higher. These firms will be subject to the remuneration and governance rules applicable to all investment firms under MiFID II but not to any additional requirements.

The proposals will be considered by the European Parliament and the Council of the European Union as part of the EU legislative process. It is intended that the new regime would start to apply 18 months after the proposals are final and formally adopted.

Feedback on the proposals is invited for submission by February 23, 2018.

The legislative proposals and related information are available at: https://ec.europa.eu/info/publications/171220-investment-firms-review_en.

European Banking Authority Publishes Recommendations on Outsourcing by Financial Institutions to Cloud Service Providers

On December 20, 2017, the EBA published its final report on Recommendations on outsourcing by financial institutions to cloud service providers. The EBA has developed the Recommendations on its own initiative as part of its broader work on FinTech, given the increasing importance and popularity of cloud services as an enabling technology used by financial institutions.

The Recommendations are designed to complement the guidelines on outsourcing issued by the EBA's predecessor, the Committee of European Banking Supervisors on December 14, 2006. The Recommendations further specify the CEBS guidelines in five key areas: the security of data and systems; the location of data and data processing; access and audit rights; chain outsourcing; and contingency plans and exit strategies.

The Recommendations are addressed to credit institutions, investment firms and national regulators and will apply from July 1, 2018.

The EBA Final Report is available at: http://www.eba.europa.eu/documents/10180/1712868/Final+draft+Recommendations+on+Cloud+Outsourcing+%28EBA-Rec-2017-03%29.pdf.

European Banking Authority Publishes Full Impact Assessment of Basel III Reforms on EU Banks

On December 20, 2017, following the summary it published on December 7, 2017, the EBA issued its full cumulative impact assessment of the impact of the finalized "Basel III" prudential framework on EU banks.

The finalized Basel III framework, announced on December 7, 2017, includes further elements developed with the overall aim of addressing undue variability in the calculation of risk weighted assets and improving the comparability of banks' capital ratios.

Using December 2015 data, the EBA has conducted an analysis of the impact of the December 2017 revisions on the EU banking system. The EBA's impact assessment outlines, at a high level, the effect of the December 2017 revisions

on: (i) minimum required capital; (ii) regulatory capital ratios, leverage ratios and capital shortfalls; and (iii) the extent to which banks are constrained by the different metrics of capital requirement in the revised framework, namely the output floor, the leverage ratio and risk weighted assets.

The EBA proposes to conduct additional impact assessment exercises on the impact of Basel III so that the reforms for which there were no available data as of December 2015 can be included in the analysis. It will also use more recent data to better estimate the current impact. The additional impact assessment exercises will also allow banks to provide more representative data, as the results shown in this report are based on data provided by banks on a best-effort basis, according to their knowledge and understanding of the Basel III proposals as of April 2016.

The cumulative impact assessment is available at: http://www.eba.europa.eu/documents/10180/1720738/Ad+Hoc+Cumulative+Impact+Assessment+of+the+Basel+reform+package.pdf, the press release is available at: http://www.eba.europa.eu/-/eba-publishes-full-impact-assessment-of-basel-reforms-on-eu-banks and the summary of the Basel III reforms is available at: https://www.bis.org/bcbs/publ/d424_hlsummary.pdf.

European Banking Authority Consults on Amended Technical Standards for Benchmarking of Internal Models

On December 18, 2017, the EBA launched a consultation on proposals to amend the Implementing Technical Standards specifying the benchmarking portfolios, templates and definitions to be used as part of the annual benchmarking exercise by those institutions that use internal approaches for market and credit risk.

Feedback gathered by the EBA from institutions and national regulators suggest that changes to the ITS on benchmarking of internal models are needed to provide clearer instructions of reporting requirements, better data validation and more relevant portfolios for which benchmark values can be calculated. The changes proposed by the EBA relate to both market risk and credit risk. Minor changes are also proposed to the reporting templates and instructions, to keep the portfolios up to date and ensure the reported data is relevant for the 2019 assessment.

Comments on the proposals are invited by January 31, 2018. The EBA also plans to hold a public hearing to discuss the proposals on January 23, 2018.

The EBA intends that the revised benchmarking portfolios and reporting requirements will be applicable for the submission of initial market valuation data in Q3 2018 and of other market and credit risk data in 2019.

The consultation paper is available at: http://www.eba.europa.eu/documents/10180/2065270/Consultation+Paper+on+ITS+amending+Com+Impl.+Regulation+EU+2016-2070+on+Benchmarking+%28EBA-CP-2017-23%29.pdf and Annex 1 – Annex 7 are available at: http://www.eba.europa.eu/regulation-and-policy/other-topics/regulatory-and-implementing-technical-standards-on-benchmarking-portfolios/-/regulatory-activity/consultation-paper.

European Banking Authority Seeks Views on Implementation Issues Arising From Revisions to the Capital Requirements Regulation

On December 18, 2017, the EBA published a discussion paper seeking early-stage feedback on potential implementation issues arising from proposed revisions to the CRR to incorporate new international standards for counterparty credit risk and market risk. These international standards, developed by the Basel Committee, comprise: (i) the SA-CCR framework, a new standardized approach for measuring exposure at default for counterparty credit risk, which will replace both current non-internal models approaches, namely the Current Exposure Method and the Standardised Method; and (ii) the Fundamental Review of the Trading Book framework, which makes a number of revisions and enhancements to the framework for market risk following the fundamental review of the trading book undertaken by the Basel Committee.

The CRR 2 proposal published by the European Commission in December 2016 is still being discussed by the Council of the European Union and the European Parliament as part of the normal EU legislative procedure. However, the EBA has considered its draft mandates under those proposals and identified a number of issues that banks implementing the SA-CCR and/or the FRTB frameworks are likely to face, due to the need to introduce changes to infrastructures, IT systems, data management, pricing models or approximating techniques.

For implementation of SA-CCR, the EBA considers that the key implementation issues arise from the requirements for mapping of derivative transactions to risk categories and the incompatibility of negative interest rates with the supervisory delta formula established in the SA-CCR framework. For implementation of FRTB, the EBA highlights six issues: the revised boundary between the trading book and non-trading book; the treatment of non-trading book positions subject to FX or commodity risk; residual risk add-on; the assignment of appropriate liquidity horizons under the internal model approach; the revised requirements for backtesting and the new profit and loss attribution test; and the calculation of the stress scenario that must be applied, under the internal model approach, to risk factors that have been identified as "non-modellable."

Stakeholders are invited to give feedback on the analyses and proposed approaches set out in the discussion paper by March 15, 2018. The EBA will hold a public hearing on the issues in the discussion paper on February 5, 2018.

The EBA will review the responses to the discussion paper and will formally consult on Regulatory Technical Standards once the CRR 2 legislation, and the EBA mandates under it, are finalized.

The discussion paper is available at: https://www.eba.europa.eu/documents/10180/37073/Discussion+Paper+on+EU+implementation+of+MKR+and+CCR+revised+standards+%28EBA-DP-2017-04%29.pdf/a5f47920-54be-4b68-a25c-119c70606186 and the online response form is available at: http://www.eba.europa.eu/regulation-and-policy/market-risk/discussion-paper-on-eu-implementation-of-mkr-and-ccr-revised-standards.

European Banking Authority Consults on Draft Technical Standards on Risk Retention for Securitization Transactions

On December 15, 2017, the EBA launched a consultation on draft RTS on risk retention requirements for originators, sponsors and original lenders under the new EU securitization framework for STS securitizations. The new framework is made up of the STS Regulation and amendments to the existing CRR. The STS Regulation, which will come into effect in 2018, provides the criteria for identifying which securitizations will be designated as STS securitizations, a system to monitor the application of those criteria as well as common requirements on risk retention, due diligence and disclosure for all financial services sectors. The amended CRR sets out the regulatory treatment of exposures to securitizations that are deemed to be STS securitizations.

The STS Regulation requires, among other things, originators, sponsors or original lenders of a securitization to retain on an ongoing basis a material net economic interest in the securitization of at least 5 %. The draft RTS specify in greater detail the risk retention requirement, including the modalities of retaining risk, the measurement of the level of retention, the prohibition of hedging or selling the retained interest and the conditions for retention on a consolidated basis.

The STS Regulation will replace those parts of the CRR that relate to risk retention and the draft RTS will replace much of the existing Commission Delegated Regulation under the CRR. The draft RTS differ in scope from the current Commission Delegated Regulation, and introduce various new provisions outside the scope of the Commission Delegated Regulation. However, the current Commission Delegated Regulation will continue to apply in areas where the scope of the RTS under the STS Regulation is narrower. Transitional provisions will also apply to securitizations that pre-date the STS Regulation.

Comments on the draft RTS are invited by March 15, 2018. The draft RTS will then be finalized and submitted to the European Commission for adoption. The EBA will hold a public hearing on the consultation on February 19, 2018.

The consultation paper is available at: http://www.eba.europa.eu/documents/10180/2063496/Consultation+Paper+on+RTS+on+risk+retention+%28EBA-CP-2017-22%29.pdf, the registration page for the EBA public hearing is available at: https://www.eba.europa.eu/home and the current Commission Delegated Regulation on risk retention ((EU) No 625/2014) is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_174_R_0006&rid=1.

European Banking Authority Consults on Draft Technical Standards on Homogeneity of Underlying Exposures in Securitization

On December 15, 2017, the EBA launched a consultation on draft RTS on the homogeneity of underlying exposures in securitizations under the new STS Regulation.

The "simple" criterion for STS securitizations provides, among other things, that the securitization must be backed by a pool of underlying exposures that are homogenous in terms of asset type and that the underlying exposures must include obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors. The homogeneity requirement in the STS Regulation is designed to better enable investors to assess risk and conduct robust due diligence.

The EBA must further specify which exposures are deemed homogenous. It has developed the proposed RTS to specify criteria for homogeneity of underlying exposures based on how they are underwritten, how they are serviced, the risk factors they take into account and the asset category into which they fall. The draft RTS include a list of asset categories reflecting the most common types of underlying exposures securitized in the market.

Comments on the draft RTS are invited by March 15, 2018. The draft RTS will then be finalized and submitted to the European Commission for adoption. The EBA will hold a public hearing on the consultation on February 19, 2018.

The consultation paper (EBA/CP/2017/21) is available at: http://www.eba.europa.eu/documents/10180/2063262/Consultation+Paper+on+RTS+on+homogeneity+of+underlying+exposures+in+securitisation+%28EBA-CP-2017-21%29.pdf.

European Securities and Markets Authority Launches Three Consultations on Technical Standards Under the Securitization Regulation

On December 19, 2017, ESMA issued three consultations on technical standards under the new STS Regulation. The STS 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 STS Regulation allows (but does not require) originators, sponsors and SSPEs 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.

In addition, SSPEs, originators and sponsors of a securitization must make certain information available via a securitization repository to holders of a securitization position, to the national regulators and, upon request, to potential investors. Those securitization repositories are subject to certain operational standards and access to the data held by them is subject to certain conditions being met.

The consultation papers invite feedback on:

1. Draft RTS and draft ITS on the content and format of the "Simple, Transparent and Standardized" notification.

2. Draft RTS and ITS on disclosure requirements, operational standards and access conditions.

3. Draft RTS on the authorization requirements for third-party firms to provide STS verification services. The draft RTS set out the information to be provided by the third-party applicant firms in relation to their fee structure,

independence, management body, the operational safeguards and internal processes that enable a firm to assess STS compliance and how the firm will prevent conflicts of interest.

ESMA invites comments on the consultations by March 19, 2018. ESMA expects to publish a final report on the technical standards for the STS notification and third-party application requirements by July 2018. It expects to publish a final report on the technical standards for the reporting requirements and operational standards/access conditions by the end of 2018.

The consultation paper on draft technical standards on content and format of the "Simple, Transparent and Standardized" notification is available at: https://www.esma.europa.eu/sites/default/files/library/esma33-128-33_consultation_paper_sts_notification_1.pdf, the consultation paper on draft technical standards on disclosure requirements, operational standards and access conditions is available at: https://www.esma.europa.eu/sites/default/files/library/esma33-128-107_consultation_paper_disclosure_and_operational_standards_0.pdf and the consultation paper on draft technical standards on third-party firms providing STS verification services under the STS Regulation is available at: https://www.esma.europa.eu/sites/default/files/library/esma33-128-108_consultation_paper_third-party_firm_sts_verification_application_0.pdf.

Basel Committee on Banking Standards Proposes Technical Amendment to the Net Stable Funding Ratio

On December 21, 2017, the Basel Committee published a proposed technical amendment to the Net Stable Funding Ratio. Consultation on the proposed technical amendment will run for a short 45-day consultation period, under a new procedure adopted by the Basel Committee at its meeting in December 2017.

The proposed technical amendment relates to the treatment of extraordinary monetary policy operations in the NSFR. The amendment proposes to allow reduced required stable funding factors for central bank claims with maturity of more than six months.

The Basel Committee invites comments on the proposed technical amendments by February 5, 2018.

The consultation is available at: https://www.bis.org/bcbs/publ/d429.pdf, the online response form is available at: https://www.bis.org/bcbs/commentupload.htm and the press release is available at: https://www.bis.org/press/p171221.htm.

Basel Committee Consults on Revised Principles for Supervisory and Bank Stress Testing

On December 20, 2017, the Basel Committee published proposals on a revised version of the stress testing principles it first published in 2009. The revisions to the principles are the outcome of a review of its current stress testing principles, carried out during 2017.

The proposed new principles have been stated at a higher level than the previous principles, so that the principles can apply across many banks and jurisdictions and so that they are robust to developments in stress testing practices. Overlaps between principles have also been removed, along with some of the descriptive wording accompanying each principle. While the application of the previous set of principles was split between banks and supervisors, it is intended that each of these new "streamlined" principles will apply to both supervisors and banks. Additional considerations for banks and supervisory authorities are set out within each principle.

Comments on all aspects of the proposed new principles are invited by March 23, 2018. Comments should be submitted using an online response form.

The consultation paper is available at: https://www.bis.org/bcbs/publ/d428.pdf and the online response form is available at: https://www.bis.org/bcbs/commentupload.htm.

Brexit for Financial Services

UK Regulators Consults on Authorization and Supervision of International Banks, Investment Firms, Insurers and CCPs Post-Brexit

On December 20, 2017, the Bank of England, the Prudential Regulation Authority and the Financial Conduct Authority published consultations and planning considerations affecting international banks, investment firms, insurers and CCPs conducting cross-border activities into and from the United Kingdom. The U.K. Government has also made an announcement that, if necessary, it will legislate to enable EEA firms and funds operating in the United Kingdom to obtain a "temporary permission" to continue their activities in the United Kingdom for a limited period after withdrawal. Alongside the temporary permissions regime, it will also legislate, if necessary, to ensure that contractual obligations, such as insurance contracts, which are not covered by the temporary regime, can continue to be met. It will also bring forward secondary legislation to empower U.K. authorities to carry out functions currently carried out by EU authorities relating to CCPs, central securities depositaries, credit rating agencies and trade repositories.

The BoE has published a "Dear CEO" letter which it has sent to the Chief Executive Officers of non-U.K. CCPs, setting out how it envisages recognizing them for the provision of services in the United Kingdom once the United Kingdom has withdrawn from the EU. CCPs are currently recognized by ESMA to operate in the EU under the European Market Infrastructure Regulation. Under proposals from the U.K. Government, the BoE will be given new powers under U.K. law to recognize non-U.K. CCPs. The BoE anticipates that the recognition regime for non-U.K. CCPs will, immediately after the United Kingdom's withdrawal, largely mirror the current regime in EMIR to provide certainty to non-U.K. CCPs and their users for the period immediately following EU withdrawal. The BoE intends to review the U.K. recognition framework in due course. The BoE invites the CEOs of non-U.K. CCPs to consider whether, based on its activities, the CCP will require U.K. recognition post-EU withdrawal and invites non-U.K. CCPs that will be seeking U.K.-recognized status to engage in pre-application discussions in early 2018.

The PRA has also published a "Dear CEO" letter which it has sent to the CEOs and branch managers of banks, insurers and designated investment firms that undertake cross-border activities between the United Kingdom and the rest of the EU. The PRA confirms in the letter that firms may submit authorization applications from January 2018. It also encourages those inbound firms that have not done so already to approach the PRA for pre-application discussions where necessary. The PRA has also published two consultation papers setting out proposals on its approach to the authorization and supervision of international banks and international insurers.

The PRA's consultation on authorization and supervision of international banks is relevant to all PRA-authorized deposit-takers and designated investment firms operating in the United Kingdom that are part of non-U.K. headquartered groups and to international banks that may seek PRA authorization in the future. The PRA does not propose to change its current supervisory approach to U.K. subsidiaries of international banks (as stated in its current supervisory statement SS10/14). However, the consultation paper sets out a general approach, applicable to all branches, along with PRA's additional expectations for significant retail and systemic wholesale branches.

Under the new approach, banks undertaking material retail activity above de minimis thresholds will (as now) need to establish a subsidiary. Other banks must satisfy the PRA's minimum expectations. Where the PRA deems the branch to be systemically important, there must be adequate means to enable the PRA to gain sufficient assurance over the supervisability of the branch. This includes enhanced co-operation with the home regulator and greater reassurance over resolvability. The PRA can also impose additional specific regulatory requirements at branch level.

The PRA's consultation on authorization and supervision of international insurers proposes some new factors to be considered alongside its current requirements for third-country branch authorization, namely: the scale of U.K. branch activity covered by the Financial Services Compensation Scheme and the extent to which the PRA is satisfied that the

protected amount covered by the FSCS can be absorbed by insurers liable to contribute to the FSCS; and the impact of the failure of a firm with a U.K. branch on the wider insurance market and financial system.

Comments on both PRA consultations are invited by February 27, 2018.

All regulators have welcomed the outcome of the European Council meeting on December 14 – 15, 2017, including agreement of the need to negotiate a transitional period during which firms would be able to continue undertaking cross-border activities between the United Kingdom and EU. The FCA also issued a statement welcoming the U.K. Government's commitment to legislate for a temporary permissions regime if necessary and confirming its intention to work closely with the U.K. Government and co-operate closely with the home state regulators of EEA firms and the European Supervisory Authorities to ensure a smooth transition to the post-Brexit regime. The FCA proposes to monitor the ongoing negotiations and provide further information to firms as appropriate. It will also set out further details of its approach to notifications and authorizations under a temporary regime in 2018.

The BoE "Dear CEO" letter to non-U.K. CCPs is available at: https://www.bankofengland.co.uk/-/media/boe/files/letter/2017/letter-to-ccps.pdf?la=en&hash=544DA5A3C8759C5D16D66FC5C269452912B8EF3F, the HM Treasury announcement on legislative proposals for financial services is available at: https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-12-20/HCWS382/, the PRA "Dear CEO" letter is available at: https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/letter/2017/firms-preparations-for-uk-withdrawal-from-the-eu.pdf, the PRA consultation on authorization and supervision of international banks (CP29/17) is available at: https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2017/cp2917.pdf, the PRA consultation on authorization and supervision of international insurers (CP30/17) is available at: https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2017/cp3017.pdf?la=en&hash=FA4613AF416B1E6EDB48329EC67FC61C2E13AF55 and the FCA statement on EU withdrawal is available at: https://www.fca.org.uk/news/statements/fca-statement-eu-withdrawal.

Consumer Protection

New York State Department of Financial Services Proposes Fiduciary Standard for Insurance Brokers

On December 27, 2017, the New York Department of Financial Services published a proposed amendment which would require insurance brokers to offer products that align with a customer's "best interest," instead of products that offer the most economic benefit to the broker. The proposed amendment sets forth what constitutes acting in the best interest of a customer, which includes an evaluation of the suitability information of the customer and a determination that a product is suitable for the particular customer. In an accompanying press release New York Governor Andrew Cuomo drew comparisons between the proposed amendment and the U.S. Department of Labor's Fiduciary Rule, of which the implementation of certain provisions of the latter has been delayed. As proposed, the NYDFS amendment is more expansive than the DOL's Fiduciary Rule with respect to the products that it covers. The proposed amendment is open for public comment until February 25, 2018, and is scheduled to take effect March 27, 2018.

The proposed amendment is available at: http://www.dfs.ny.gov/insurance/r_prop/rp187a1text.pdf.

Corporate Governance

Federal Reserve Board Proposes Guidance Clarifying Risk Management Supervisory Expectations for Large Financial Institutions

On January 4, 2018, the U.S. Board of Governors of the Federal Reserve System issued proposed guidance for comment that would clarify supervisory expectations related to risk management for large financial institutions. This proposed guidance would complement the Federal Reserve Board's proposed rating system for large financial institutions and

proposed guidance regarding supervisory expectations for bank boards of directors that were released in August of 2017. The proposed guidance provides core principles applicable to senior management, management of business lines and independent risk management and controls. Under the proposed guidance, senior management is tasked with the management of the day-to-day operations of the institution, ensuring its safety and soundness and overseeing compliance with laws, regulations and internal policies and procedures. The core principles applicable to business line management are divided into the categories of (i) implementation and execution or strategy and risk tolerance, (ii) risk identification and risk management, (iii) resources and infrastructure of business lines, (iv) business controls and (v) accountability. The core principles applicable to independent risk management and controls are divided into the categories of (i) governance, independence and stature (including of the Chief Risk Officer and Chief Audit Executive), (ii) independent risk management, (iii) internal controls and (iv) internal audit. The proposed guidance would apply to domestic bank holding companies with total consolidated assets of $50 billion or more, savings and loan holding companies with total consolidated assets of $50 billion or more, the combined U.S. operations of foreign banking organizations with combined U.S. assets of $50 billion or more, any state member bank subsidiaries of the foregoing and systemically important nonbank financial companies designated by the FSOC for supervision by the Federal Reserve Board. Comments to the proposed guidance are due March 15, 2018.

The proposed guidance is available at:
https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180104a1.pdf.

Derivatives

EU Final Draft Technical Standards Amending Margin Requirements for Uncleared OTC Derivatives

On December 18, 2017, the Joint Committee of the ESAs published a final report containing final draft RTS amending the requirements for risk-mitigation techniques for uncleared OTC derivative contracts where those contracts relate to physically settled FX forwards. The European Market Infrastructure Regulation requires counterparties to uncleared OTC derivative transactions to implement risk mitigation techniques to reduce counterparty credit risk. The RTS prescribe required margin amounts to be posted and collected and the methodologies by which the minimum amount of initial margin and variation margin should be calculated, as well as listing securities eligible as collateral, such as sovereign bonds, covered bonds, some securitization instruments, corporate bonds, gold and some equities. The variation margin requirements have applied to all counterparties since March 1, 2017, although they only applied for physically-settled FX forwards from January 3, 2018.

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

The ESAs are proposing to amend the RTS to align the treatment of VM for physically-settled FX forwards with the supervisory guidance applicable in other key jurisdictions. The effect of the change will be that the requirement to exchange VM for physically settled FX forwards will capture only transactions between credit institutions and investment firms, rather than all counterparties within the scope of EMIR. The ESAs recognize that, due to the EU legislative process, the amended RTS will enter into force after January 3, 2018. The ESAs therefore recommend that, prior to the amended RTS coming into force, national regulators should apply the EU framework in a risk-based and proportionate manner for transactions between credit institutions or investment firms and other counterparties.

The final report and proposals to amend the RTS are available at: https://esas-joint-committee.europa.eu/Publications/Technical%20Standards/Joint%20Draft%20RTS%20on%20margin%20requirements%20for%20non-centrally%20cleared%20OTC%20derivatives%20(JC-2017-79).pdf.

Final Global Governance Arrangements for Unique Transaction Identifier Published

On December 29, 2017, the Financial Stability Board published the Governance Arrangements for the Unique Transaction Identifier and a recommended implementation plan for the arrangements following its consultation in March 2017. The UTI is a critical element for the production and sharing of global aggregated derivatives reporting data. The purpose of the global UTI would be to uniquely identify each OTC derivative transaction required by authorities to be reported to trade repositories, thus minimizing the potential for the same transaction to be counted more than once.

The FSB has designated the International Organization for Standardization as the body responsible for publishing and maintaining the UTI data standard. The Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions have been designated on an interim basis as responsible for the governance functions relating to the UTI. The FSB would like the UTI to have a common governance framework and governance body with the unique product identifier and will make the final permanent designation once the governance of the UPI is finalized. The FSB intends to consult further on the UPI governance arrangements in 2018.

The FSB recommends that the UTI is implemented by no later than the end of 2020.

The FSB's governance arrangements for the UTI are available at: http://www.fsb.org/wp-content/uploads/P291217.pdf.

Enforcement

UK Conduct Regulator Bans RBS Trader for Manipulation of Japanese Yen LIBOR

On January 8, 2018, the FCA published a Final Notice in relation to Neil Danziger, a former RBS interest rate derivatives trader, in connection with his involvement in the manipulation of Japanese Yen LIBOR. The FCA imposed a financial penalty of £250,000 on Mr. Danziger and prohibited him from performing any function in relation to any regulated financial activity.

The FCA found that Mr. Danziger was knowingly concerned in a breach of Principle 5, which requires firms to "observe proper standards of market conduct." In particular, when acting as a Substitute Submitter for JPY LIBOR from time to time, Mr. Danziger improperly took into account the requests of other traders and trading positions for which he and other traders were responsible. At other times, he made requests to Primary Submitters in an attempt to influence RBS's LIBOR submissions.

Mr. Danziger had also recklessly engaged in wash trades with the purpose of paying brokerage to brokers for no legitimate commercial reason.

This is the latest in a series of FCA actions against individuals involved in the LIBOR scandal. In addition, five people have so far received criminal convictions for their parts in LIBOR manipulation in the United Kingdom. Investigations into alleged LIBOR manipulation continue.

The FCA Final Notice is available at https://www.fca.org.uk/publication/final-notices/neil-danziger-2018.pdf.

Financial Crime

UK Joint Money Laundering Steering Group Publishes Final Revised Guidance for Financial Services

On December 21, 2017, the Joint Money Laundering Steering Group published final revised guidance on anti-money laundering and counterterrorist financing for the financial services sector. The revised guidance will only replace the existing guidance once it has been approved by HM Treasury, however, the JMLSG notes that firms may use the revised version if they wish to.

JMLSG's announcement is available at: http://www.jmlsg.org.uk/news/further-amendments-to-jmlsg-guidance1.

Financial Market Infrastructure

LIBOR Categorized As a Critical Benchmark Under EU Legislation

On December 28, 2017, a Commission Implementing Regulation amending the list of critical benchmarks used in financial markets under the Benchmark Regulation was published in the Official Journal of the European Union. The amending Regulation adds the London Interbank Offered Rate—LIBOR—to the list of critical benchmarks.

The Benchmark Regulation provides for different categories of benchmarks depending on the risks involved, imposing additional requirements on benchmarks considered to be critical, including the power of national regulators to mandate, under certain conditions, contributions to or the administration of a critical benchmark. For the most part, the Benchmark Regulation applied from January 1, 2018. Certain provisions, giving powers to ESMA to prepare draft technical standards and to the Commission to adopt delegated legislation, applied from June 30, 2016.

The original Implementing Regulation, which entered into force on August 13, 2016, listed the Euro Interbank Offered Rate as the first critical benchmark. The amending Implementing Regulation entered into force on December 29, 2017.

The amending Implementing Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2446&from=EN.

UK Financial Conduct Authority Publishes Near-Final Rules for Implementation of the EU Benchmarks Regulation

On December 20, 2017, the U.K. FCA published a Policy Statement setting out responses to its earlier consultation in June 2017 on proposed Handbook changes to ensure that the Handbook is consistent with the provisions of the EU Benchmarks Regulation, which takes effect on January 1, 2018. The Policy Statement includes further clarifications, in particular on the treatment of commodity benchmarks, on one-off application fees and annual periodic fees and on other Handbook rules and guidance that the FCA will apply in addition to the BMR.

The Policy Statement includes the final form of the legal instrument which contains the Handbook changes. The FCA will make the Handbook changes once it has the necessary regulatory authority under proposed changes to U.K. secondary legislation.

The Handbook changes will affect benchmark administrators and also firms that are already supervised under EU financial services legislation and that either use or contribute input data to benchmarks.

The Policy Statement (PS17/28) is available at: https://www.fca.org.uk/publication/policy/ps17-28.pdf.

UK Government Makes Orders De-recognizing CHAPS and Amending Designation of Cheque & Credit

On December 19, 2017, HM Treasury made two Orders which take effect from December 20, 2017.

The first Order amends the designation Order in force since April 2015 designating Cheque & Credit as a regulated payment system. The changes relate to the specification of the arrangements constituting Cheque & Credit, allowing for development in the Cheque & Credit Rules relating to the processing of the images of cheques and other paper instruments. The Order also makes references to participants as well as members of Cheque & Credit.

The second Order revokes the recognition order of January 5, 2010 specifying CHAPS as a recognized payment system under the Banking Act 2009.

The Order amending the designation of Cheque & Credit is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/669581/CC_Order.pdf and the Order for de-recognition of CHAPS is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/669584/CHAPS_de-recognition_order.pdf.

FinTech

SEC Chairman Jay Clayton Releases Statement on Cryptocurrencies and Initial Coin Offerings

On December 11, 2017, Chairman of the U.S. Securities and Exchange Commission Jay Clayton released a public statement regarding cryptocurrencies and initial coin offerings (ICOs). In the statement, Chairman Clayton notes rapid growth in these areas and how expanding areas of innovation in this space may impact retail consumers and market professionals. With regard to retail consumers, Clayton reiterated that these investments carry with them reduced investor protections in comparison to traditional investments, highlighting that no ICOs have been registered with the SEC to date. For market professionals, Chairman Clayton stressed that ICOs, while an innovation in the field, may still constitute securities transactions subject to SEC regulation, noting that much of the distinction between ICOs and traditional offerings may be more of a matter of form, rather than substance. Clayton also raised this point as it relates to cryptocurrencies, stating that merely calling a product a "currency" does not change the analysis of whether it is a security.

Chairman Clayton further discussed the need for adequate disclosure, processes and investor protections with regard to ICOs, and stated that for cryptocurrencies, market professionals should either be able to demonstrate that the product is not a security, or comply with securities regulations.

The full text of Chairman Clayton's statement is available at: https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11.

Commodity Futures Trading Commission Discusses Approach to Virtual Currency Futures Markets

On January 4, 2018, the Commodity Futures Trading Commission released a backgrounder on the federal oversight of virtual currencies and its approach to regulating the virtual currency derivatives markets. Because virtual currencies have been deemed a commodity, certain derivative and other transactions in virtual currencies may be subject to CFTC oversight under the Commodity Exchange Act.

The CFTC outlined its 5-pronged approach to the regulation of derivatives involving virtual currencies, which will focus on (1) consumer education; (2) asserting legal authority; (3) market intelligence; (4) robust enforcement; and (5) government-wide coordination.

Additionally, the CFTC provided further detail on the self-certification process for new derivatives products involving virtual currencies at a futures exchange, as well as an explanation of the "heightened review" it has undertaken for such filings, within the limits of the CFTC's ability to stay or block such a filing. The CFTC noted in particular certain standards it would expect to apply to virtual currency futures, including substantially higher margin requirements as compared to other products, reporting requirements and surveillance coordination. The CFTC also noted it has limited authority to block or stop derivative trading on virtual currencies, and further argued that attempting to do so would have "ensured that the virtual currency spot markets continue to operate without federal regulatory surveillance for fraud and manipulation."

The CFTC considered the impact of virtual currency derivatives on three particular constituencies: (1) market participants and consumers; (2) the public interest generally; and (3) derivatives clearing organization clearing members. The CFTC notes that it has these constituencies in mind when reviewing proposals regarding the virtual currency derivatives markets.

The CFTC also announced that its Market Risk Advisory Committee will meet on January 31, 2018 to discuss the statutory and regulatory process for listing new derivatives products, such as those based on virtual currencies, through the self-certification process on CFTC-regulated designated contract markets and swap execution facilities. This follows

an announcement that the CFTC's Technology Advisory Committee will meet on January 23, 2018 to discuss new and emerging technology such as virtual currencies, digital ledger technology, cybersecurity and more.

The CFTC Backgrounder on Oversight of and Approach to Virtual Currency Futures Markets is available at: http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/backgrounder_virtualcurrency01.pdf, the CFTC's Market Risk Advisory Committee meeting announcement is available at: http://www.cftc.gov/PressRoom/PressReleases/pr7668-18?_sm_au_=iVVJ0rjjGFRrkWTN and the CFTC's Technology Advisory Committee meeting announcement is available at http://www.cftc.gov/PressRoom/PressReleases/pr7660-17.

Draft UK Legislation Confirms Regulatory Position of Borrowers on Peer-to-Peer Lending Platforms

On December 21, 2017, HM Treasury published draft legislation to amend the Financial Services and Markets Act 2000 (Carrying on Regulated Activities By Way of Business) Order 2001 (S.I. 2001/1177), to clarify the position of borrowers who raise funds through peer-to-peer lending platforms.

The draft Order will, once it is approved by Parliament, clarify that only firms whose core business involves borrowing through a peer-to-peer platform would need to obtain a banking license and be regulated as a "deposit taker." The draft legislation has been laid before Parliament to address uncertainty for businesses borrowing via peer-to-peer platforms (and for the platforms themselves) as there is a risk that those borrowers might in certain circumstances be carrying on the regulated activity of accepting deposits.

The draft legislation must be approved by both Houses of Parliament and will come into force on the day after the day on which it is made.

The draft Order is available at: http://www.legislation.gov.uk/ukdsi/2018/9780111163832/pdfs/ukdsi_9780111163832_en.pdf and the explanatory memorandum to the draft Order is available at: http://www.legislation.gov.uk/ukdsi/2018/9780111163832/pdfs/ukdsiem_9780111163832_en.pdf.

UK Financial Conduct Authority Rules Out New Rules for Distributed Ledger Technology

On December 15, 2017, the FCA published a feedback statement on Distributed Ledger Technology, following the discussion paper it issued in April 2017.

Respondents to the discussion paper provided the FCA with details of various use cases for DLT in the context of payments, asset management, securities trading, financial crime and regulatory reporting. The feedback statement summarizes stakeholder feedback and the FCA's response in relation to: the operational risks arising from permissioned and permissionless networks; the risks and legal and regulatory issues associated with digital currencies and initial coin offerings; digital asset trading and smart contracts; the ability of DLT to improve regulatory reporting and the benefits it could bring in tackling financial crime; and whether DLT is compatible with the requirements of the EU General Data Protection Regulation.

Taking into account the feedback from respondents to the discussion paper, along with its own experiences with DLT applications, such as Blockchain, via its Project Innovate initiative, the FCA sees no need to propose any changes to its Handbook at this time. The FCA remains supportive of technical innovation. It will, however, continue to monitor the DLT environment and will continue to engage and collaborate with industry and other national and international regulatory bodies and global standard-setters. The FCA will review the developments around ICOs more closely to decide whether any regulatory action is required, in particular, following the consumer alert issued in September 2017.

The feedback statement (FS17/4) is available at: https://www.fca.org.uk/publication/feedback/fs17-04.pdf.

MiFID II

European Commission Declares Exchanges in Switzerland Equivalent for the Purposes of the Shares Trading Obligation

On December 20, 2017, the European Commission adopted an Implementing Decision declaring the two Swiss stock exchanges equivalent for the purpose of the shares trading obligation under the Markets in Financial Instruments Regulation. MiFIR requires EU investment firms to ensure that the trades they undertake in shares admitted to trading on a regulated market or traded on a trading venue take place on a regulated market, multilateral trading facility, systematic internaliser or equivalent third-country trading venue.

The legal and supervisory framework of SIX Swiss Exchange AG and BX Swiss AG have been assessed as equivalent to the requirements of MiFIR, the revised Markets in Financial Instruments Directive, the Market Abuse Regulation and the Transparency Directive.

This equivalence decision will allow investment firms to comply with the MiFID II shares trading obligation when shares are traded on SIX Swiss Exchange AG or BX Swiss AG. Swiss stock exchanges are authorized and supervised by the Swiss Financial Market Supervisory Authority. The Implementing Decision, which will enter into force once it has been published in the Official Journal of the European Union, is limited to one year, until December 31, 2018.

The Commission Implementing Decision is available at: http://ec.europa.eu/finance/docs/level-2-measures/mifid-implementing-act-2017-9117_en.pdf and the Annex is available at: http://ec.europa.eu/finance/docs/level-2-measures/mifid-implementing-act-2017-9117-annex_en.pdf.

EU Implementing Technical Standards for Passporting Under the Revised Markets in Financial Instruments Directive Published

On December 20, 2017, Commission Implementing Regulation (EU) 2017/2382 was published in the Official Journal of the European Union and took effect on January 3, 2018.

The Implementing Regulation contains ITS on the standard forms and templates that should be used for notifications and the procedures for the transmission of information when investment firms, market operators operating a multilateral trading facility or organised trading facility, and, where required by the revised Markets in Financial Instruments Directive, credit institutions, want passport investment services or perform activities in another Member State.

The Implementing Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2382&from=EN.

European Securities and Markets Authority Issues Statement on Introduction of the Legal Entity Identifier Requirements

On December 20, 2017, ESMA published a statement in response to indications that not all investment firms will succeed in obtaining Legal Entity Identifier codes from all their clients that are legal persons ahead January 3, 2018 when the Markets in Financial Instrument Regulation takes effect. There is also concern that trading venues may not obtain LEI codes for non-EU issuers in time.

Under MiFIR, investment firms are required to identify all clients that are legal persons with an LEI code. An investment firm is acquired to obtain the LEI code of a client prior to providing any service that triggers the obligation to submit a transaction report for a transaction entered into on behalf of a client who is eligible for the LEI code. Trading venues must also identify each issuer of a financial instrument traded on their systems with an LEI code when making daily submissions to the Financial Instruments Reference Data System.

ESMA has confirmed that, for a temporary period of six months from January 3, 2018:

(1) investment firms may provide a service triggering the obligation to submit a transaction report to a client from which it has not obtained an LEI code, provided that, before providing the service, the investment firm obtains the necessary documentation from the client to apply for an LEI code on the client's behalf; and

(2) trading venues may report their own LEI codes instead of LEI codes of non-EU issuers while reaching out to those non-EU issuers.

ESMA states that this practice will be accepted only on a temporary basis and national regulators should closely monitor the timelines, accuracy and completeness of the submitted transaction reports. ESMA recognizes that this temporary practice will also require national regulators to amend a validation rule in their transaction reporting systems to allow for the acceptance of transaction reports where the LEI is issued after the transaction execution date.

In the United Kingdom the FCA has issued a statement in response to ESMA's statement. The FCA confirms that it will need to temporarily amend a validation rule in its transaction reporting system, the Market Data Processor. The FCA proposes to make this amendment as soon as possible. Firms should not seek to submit reports without the necessary LEI until the change to the validation rule has been made.

The ESMA statement is available at: https://www.esma.europa.eu/sites/default/files/library/esma70-145-401_lei_statement.pdf and the FCA statement is available at: https://www.fca.org.uk/news/news-stories/fca-response-esmas-public-statement-leis.

European Securities and Markets Authority Updates its Procedure and Template for Reporting of Circuit Breakers' Parameters

On December 19, 2017, ESMA published a revised procedure and a harmonized template to be used by national regulators in reporting to ESMA the parameters to halt or constrain trading used by the trading venues under their jurisdiction. The revised MiFID II places obligations on national regulators to require a regulated market in their jurisdiction to be able to temporarily halt or constrain trading if there is significant price movement in a financial instrument on that market or a related market during a short period and, in exceptional cases, to be able to cancel, vary or correct any transaction. The regulated market must report the parameters for halting trading and any material changes to those parameters to the national regulator and the national regulator must in turn report them to ESMA.

The ESMA procedure and template is designed to establish a common format for national regulators to use for the reports they make to ESMA. However, national regulators can, if they wish, require trading venues to report to them the parameters using a different and/or more granular format.

ESMA has postponed the delivery of the first reports under the procedure by six months. The first reports should therefore be submitted to ESMA by the end of June 2018.

The procedure document is available at: https://www.esma.europa.eu/sites/default/files/library/esma70-156-181_procedure_reporting_circuit_breakers_parameters_0.pdf and the reporting template is available at: https://www.esma.europa.eu/sites/default/files/library/esma70-156-185_template_for_reporting_circuit_breakers_parameters_to_esma_0.xlsx.

Revised EU Guidance on Post-Trade Transparency and Position Limits When Transacting on Non-EU Trading Venues

On December 15, 2017, ESMA published two revised Opinions providing further guidance on the post-trade transparency and position limits requirements relating to transactions on non-EU trading venues under the revised MiFID II package. ESMA first published the Opinions in May 2017.

The first Opinion sets out ESMA's view on determining third-country trading venues for the purpose of transparency under MiFIR. MiFIR requires EU investment firms to make information on transactions in financial instruments traded on a trading venue public. Details of actual transactions must be made public as close to real time as possible—for equities, within one minute of trading, and for non-equities, within 15 minutes (reducing to five minutes in 2020). The Opinion sets out ESMA's view of which transactions between EU and non-EU firms, and which transactions conducted on third-country trading venues should be subject to these post-trade transparency requirements. The Opinion provides objective criteria for identifying those third-country venues that have similar post-trade transparency requirements as

EU trading venues. Trades on third-county venues that satisfy the criteria will not need to be made transparent post-trade.

The second Opinion sets out ESMA's revised objective criteria for determining third-country trading venues for the purpose of position limits under MiFID II. MiFID II requires national regulators to establish and apply position limits on the size of a net position in commodity derivatives traded on trading venues and economically equivalent OTC contracts. The limits will apply to the size of a position that a person can hold, including any other positions held on behalf of that person by group entities. Market operators and investment firms will be subject to certain position reporting requirements. The position reporting regime is intended to support the application and enforcement of position limits. ESMA believes commodity derivatives traded on third-country trading venues that meet the criteria in the Opinion should not be considered as OTC trades and hence that the positions resulting from trading those contracts should not count towards the EU position limit regime.

During 2018 ESMA will publish a list of trading venues that meet the criteria and a list of trading venues that do not, for both position limits and post-trade transparency. Those lists will be updated on an ongoing basis.

Neither Opinion is intended to prejudice any equivalence assessment performed by the European Commission under MiFID II/MiFIR, in particular, any equivalence assessment of third-country trading venues for the purposes of the trading obligations for shares and derivatives.

The Opinion on determining third-country trading venues for the purpose of transparency under MiFID II / MiFIR (ESMA70-154-467) is available at: https://www.esma.europa.eu/sites/default/files/library/esma70-154-165_smsc_opinion_transparency_third_countries.pdf and the Opinion on determining third-country trading venues for the purpose of position limits under MiFID II (ESMA70-154-466) is available at: https://www.esma.europa.eu/sites/default/files/library/esma70-156-112_cdtf_opinion_eeotc_third_countries.pdf.

EU Derivatives Trading Obligation Enters Into Force

On December 22, 2017, a Commission Delegated Regulation on the derivatives trading obligation under MiFIR was published in the Official Journal of the European Union.

The trading obligation is applicable to classes of derivatives that: (i) have been declared subject to the clearing obligation under the European Market Infrastructure Regulation, (ii) are admitted to trading or traded on at least one EU trading venue (a regulated market, multilateral trading facility, organized trading facility or a third country equivalent trading venue) and (iii) are sufficiently liquid. The trading obligation applies to financial counterparties and to non-financial counterparties. Where a class of derivatives is determined to be subject to the MiFIR trading obligation, such derivative may only be traded on a third country trading venues if it has been determined to be equivalent by the European Commission.

The Delegated Regulation contains RTS applying the trading obligation to fixed-to-float interest rate swaps denominated in EUR, USD and GBP and to index credit default swaps (iTraxx Europe Main and iTraxx Europe Crossover). The trading obligation for both IRS and CDS applied from January 3, 2018, unless the clearing obligation for a particular class of derivatives has not yet entered into force in which case the trading obligation will apply from the date that the clearing obligation begins.

By way of background, the related clearing obligation applies to IRS denominated in seven currencies (EUR, GBP, JPY, USD, NOK, PLN and SEK) and to two classes of CDS indices (iTraxx Europe Main and iTraxx Europe Crossover). The obligation to clear OTC IRS denominated in all seven currencies is in force for clearing members of EU CCPs as well as large financial counterparties and alternative investment funds. The IRS clearing obligation will apply to small financial counterparties and AIFs from June 21, 2019 and to non-financial counterparties from December 21, 2018 for IRS denominated in the G4 currencies, and from August 9, 2018 for IRS denominated in CZK, DKK, HUF, NOK, SEK

and PLN. The CDS clearing obligation is in force only for clearing members of EU CCPs. The CDS clearing obligation for large financial counterparties and AIFs and non-financial counterparties applies from August 9, 2019 and it applies to small financial counterparties and AIFs from June 21, 2019.

The Delegated Regulation entered into force on December 23, 2017 and applied across the EU from January 3, 2018.

The Delegated Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2417&from=EN.

Payment Services

European Banking Authority Publishes Opinion on Transition to the Revised Payment Services Directive

On December 19, 2017, the EBA published an Opinion on the transition from the current Payment Services Directive to the revised Payment Services Directive, which takes effect from January 13, 2018.

Not all the provisions of PSD2 or technical standards and guidelines the EBA has been mandated to prepare under PSD2 will be applicable on January 13, 2018. This delay has led to a number of transitional issues that both market participants and national regulators have approached the EBA about. The Opinion provides clarification on the issues that have been raised and considers the implications for Payment Service Providers and national regulators of the delayed finalization and/or adoption of some of the technical standards and guidelines the EBA has been preparing under PSD2.

The Opinion sets out the rights and obligations of various types of PSPs during the "transitional" period between the application date of the PSD2 and the application date of technical standards and guidelines. The Opinion also clarifies the application of the EBA Guidelines on the security of internet payments under PSD1 during that period. Finally, the Opinion clarifies what support the EBA will provide to market participants after the application date of PSD2.

The Opinion is available at: http://www.eba.europa.eu/documents/10180/2067703/EBA+Opinion+on+the+transition+from+PSD1+to+PSD2+%28EBA-Op-2017-16%29.pdf.

UK Financial Conduct Authority Will Follow European Banking Authority Guidelines Under the Revised Payment Services Directive

On December 19, 2017, the FCA issued a statement confirming that it will comply with the Guidelines published by the EBA on December 12, 2017 on security measures for operational and security risks of payments services under the revised Payment Services Directive.

PSD2 takes effect on January 13, 2018. All Payment Services Providers will be expected to comply with the EBA Guidelines. The FCA reminds businesses wishing to apply for authorization or registration under PSD2, and any PSPs that are re-applying, that applications must contain a statement of the applicant's security policy, taking into account the Guidelines. The statement of the applicant's security policy must also contain a description of the applicant's measures to comply with the provisions of the Payment Services Regulations 2017 that relate to the management of operational and security risks.

The FCA states that it intends to consult in 2018 on its approach to applying the Guidelines and on its expectations on PSPs' future reporting requirements.

The FCA statement is available at: https://www.fca.org.uk/news/statements/eba-guidelines-operational-and-security-risks-under-psd2 and the EBA Guidelines are available at: http://www.eba.europa.eu/documents/10180/2060117/Final+report+on+EBA+Guidelines+on+the+security+measures+for+operational+and+security+risks+under+PSD2+%28EBA-GL-2017-17%29.pdf.

Recovery & Resolution

US Banking Agencies Announce Joint Determinations for Living Wills of Largest US Banks

On December 19, 2017, the U.S. Board of Governors of the Federal Reserve System and the U.S. Federal Deposit Insurance Corporation announced that none of the most recent resolution plans for the eight largest and most complex domestic banking organizations had deficiencies that were so severe as to require resubmission. The agencies did, however, note that half of the resolution plans that were submitted had "shortcomings" that must be addressed in the institutions' next submissions due July 1, 2019. The Federal Reserve Board and the FDIC also stated that while this round of resolution plans demonstrates that significant progress that has been made in the area of resolution planning, more work needs to be done, especially in the areas of resolvability, internal loss-absorbing capacity, derivatives and payment, clearing and settlement activities. The agencies also noted that institutions should be cognizant of changes to their risk profiles that will need to be accounted for in future resolution plans. The Federal Reserve Board and the FDIC noted that they continue to explore ways to improve the resolution planning process and are considering extending the cycle for resolution plan submissions from annual to once every two years, to reflect the time needed to prepare and review the plans.

The joint agency press release is available at: https://www.federalreserve.gov/newsevents/pressreleases/bcreg20171219a.htm.

EU Finalizes Changes to Ranking of Unsecured Debt Instruments in Insolvency Hierarchy

On December 27, 2017, an EU Directive amending the Bank Recovery and Resolution Directive has been published in the Official Journal of the European Union. The amending Directive amends the ranking of unsecured debt instruments in the insolvency hierarchy for the purpose of bank resolution and insolvency proceedings by introducing non-preferred senior debt instruments as a separate category of senior debt. These new instruments will rank junior to all other senior liabilities but will be senior to subordinated debt. The debt instruments must have an original contractual maturity of at least one year, must not contain embedded derivatives or be derivatives themselves and the contractual documentation, including the prospectus where applicable, relating to their issuance must explicitly refer to their lower ranking under normal insolvency proceedings.

Member states are required to transpose the amending Directive into national law by December 29, 2018 and must apply the laws from the date of transposition. The new provisions will apply to unsecured claims resulting from debt instruments issued on or after the date of application of the amending Directive. The insolvency ranking of all outstanding unsecured claims resulting from instruments issued before that date will be governed by the relevant national law as adopted at December 31, 2016, unless the national law permitted firms to issue subordinated liabilities in which case the instrument will be ranked as non-preferred senior debt instruments issued under the amending Directive.

The BRRD Insolvency Hierarchy Directive is available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L2399&from=EN.

Eurozone Single Resolution Board Outlines Its MREL Policy for 2017 and Next Steps

On December 20, 2017, the Single Resolution Board published its second policy statement on the minimum requirement for own funds and eligible liabilities (MREL). MREL is the EU equivalent of the minimum amount of loss-absorbing capacity that is also covered by the international standard of total loss absorbing capacity (TLAC) developed by the FSB. MREL was introduced in May 2014 by the BRRD for all EU banks, including those banks within the SRB's remit. The SRB is the resolution authority for all banking groups and entities as well as cross-border groups that are subject to direct prudential supervision by the European Central Bank (i.e., for banks within the Banking Union).

The SRB's MREL policy for 2017 provides for a multi-year timeframe, with transition periods which will allow individual banks to implement the requirement by progressively building up their MREL capacity. This replaces the

preliminary MREL approach used in 2016. The SRB will set bank-specific binding consolidated MREL targets for the majority of the largest and most complex Eurozone banks, including all global systemically important institutions (G-SIIs) and banks with resolution colleges under its remit.

In 2018, the SRB will focus on: (i) enhancing the MREL targets based on the outcome of the SRB's resolvability assessment; (ii) refining its location policy within groups and developing a framework for individual and internal MREL; and (iii) developing a policy for transfer strategies.

The SRB Policy for 2017 is available at: https://srb.europa.eu/sites/srbsite/files/item_1_-_public_version_mrel_policy_-_annex_i_-_plenary_session.pdf.

European Commission Delegated Regulation on Contributions to the Expenditure of the Single Resolution Board Published

On December 19, 2017, Commission Delegated Regulation (EU) 2017/2361 on the final system of contributions to the administrative expenditures of the SRB was published in the Official Journal of the European Union. The SRB is the resolution authority for all banking groups and entities as well as cross-border groups that are subject to direct prudential supervision by the ECB (i.e., for banks within the Banking Union).

The Delegated Regulation sets out a final system for the determination and raising of the contributions to administrative expenditures of the SRB, which will replace the provisional system introduced in 2014. While the provisional system covered only a limited subset of entities, namely entities which are considered significant by the ECB, the final system will apply for all entities that are subject to the Single Resolution Mechanism.

The Delegated Regulation took effect on January 8, 2018.

The Delegated Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2361&from=EN.

Final Draft EU Technical Standards on Simplified Obligations and Waivers in Recovery and Resolution Planning

On December 19, 2017, the EBA published a Final Report and final draft RTS for the criteria to be used to determine whether institutions should be subject to simplified obligations for recovery and resolution planning under the Bank Recovery & Resolution Directive.

Under the BRRD, national regulators and resolution authorities may apply simplified obligations for institutions if the failure of such institutions would not be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy. National regulators and resolution authorities must make an assessment of an institution's eligibility for simplified obligations by reference to: the nature of the institution's business; its shareholding structure; its legal form; its risk profile; its size; its legal status; its interconnectedness to other institutions or to the financial system in general; the scope and the complexity of its activities; its membership of an institutional protection scheme or other cooperative mutual solidarity system; and any exercise of investment services or activities.

The EBA's final draft RTS propose that national regulators and resolution authorities conduct a two-stage eligibility assessment to determine whether an institution is eligible for simplified obligations. At stage one, national regulators should select institutions that could potentially benefit from simplified obligations based on a number of quantitative criteria measured on the basis of a set of quantitative indicators (namely size, interconnectedness, scope and complexity of activities, and nature of business). The draft RTS contain a number of indicators to be used in assessing the quantitative criteria. At stage two, national regulators and resolution authorities should verify whether institutions selected as potentially eligible for simplified obligations in stage one also meet the qualitative criteria, namely the criteria of interconnectedness, scope and complexity of activities, nature of business, shareholding structure, legal form, legal status, membership of an IPS or other cooperative solidarity systems, risk profile and exercise of investment

services or activities. The final draft RTS contain a minimum list of considerations that the authorities should take into account in assessing the qualitative criteria.

The final draft RTS will be submitted to the European Commission for endorsement, following which there will be a three month scrutiny period for the European Parliament and the Council. Assuming no changes are made to the RTS, they will be published in the Official Journal of the European Union and come into force 20 days later.

Alongside the Final Report, the EBA has also published a further report, which provides an overview of how national regulators and resolution authorities have applied the simplified obligations and principle of proportionality in recovery and resolution planning during the first few years following the entry into force of the BRRD.

The Final Report is available at: http://www.eba.europa.eu/documents/10180/2067437/Final+draft+RTS+on+simplified+obligations+under+BRRD+%28EBA-RTS-2017-11%29.pdf and the report on simplified obligations and waivers in resolution planning is available at: http://www.eba.europa.eu/documents/10180/1720738/EBA+Report+on+the+Application+of+Simplified+Obligations+and+Waivers+in+Recovery+and+Resolution+Planning.pdf.

UK Prudential Regulation Authority Proposes MREL Reporting Requirements

On January 8, 2018, the PRA has published proposals which would require firms to report on their progress in meeting their minimum requirement for own funds and eligible liabilities (MREL) requirement. MREL is a minimum requirement for firms to maintain equity and eligible debt liabilities that can bear losses before and in resolution and results in a top up to standard regulatory capital requirements, similar in concept to the old Tier 3 requirements under Basel II. The requirement will apply to U.K. authorized banks, building societies and PRA-designated investment firms, parent undertakings of those firms that are financial holding companies and to U.K. authorized subsidiaries of such firms. The MREL requirement is the EU implementation, in the Bank Recovery and Resolution Directive, of the standard for total loss-absorbing capacity (TLAC) set by the FSB.

The PRA is proposing to amend the Supervisory Statement on Resolution Planning to set out its expectations on the information firms should provide in relation to their MREL requirement. The PRA would share the information received with the BoE which is the U.K.'s resolution authority. The PRA intends to use the information received to monitor a firm's progress in complying with its MREL requirement and to assess whether a firm is, or is likely to be, in breach of its MREL requirement.

The BoE will set MREL on a firm-by-firm basis based on the resolution strategy allotted to firms. The three resolution strategies are modified insolvency (for firms with between 40,000 and 80,000 transactional accounts), partial transfer (for firms where there are real prospects of the critical economic functions being transferred to a purchaser) and bail-in (for firms with £15-25 billion assets). Global Systemically Important Banks and Domestic Systemically Important Banks will be bail-in firms. Firms will be required to meet final MREL from January 1, 2022. G-SIBs with U.K.-incorporated resolution entities must meet an interim MREL of 16% of risk-weighted assets or 6% of leverage exposures (as per the TLAC standard) from January 1, 2019. G-SIBs and D-SIBs with U.K.-incorporated resolution entities must meet an interim MREL, from January 1, 2020, equivalent to the higher of two times their Pillar 1 requirements and their Pillar 2A capital requirement or two times the applicable leverage ratio requirement. Partial transfer firms must meet an interim MREL of 18% of RWAs by January 1, 2020. For modified insolvency firms, the BoE will set consolidated MREL at no higher than a firm's current regulatory minimum capital requirements, with a final conformance date of January 1, 2022.

Responses to the PRA's proposals on MREL reporting are due by April 9, 2018.

The consultation paper is available at https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp118.pdf?la=en&hash=F46D1D73A889524707AAE3B767EDD7D0D9855900.

Securities

European Securities and Markets Authority Publishes Final Technical Advice on the Short Selling Regulation

On December 21, 2017, ESMA published a final report setting out its technical advice to the European Commission on elements of the Short Selling Regulation that relate to market making, short-term bans on short selling and the transparency, reporting and disclosure requirements around net short positions. ESMA consulted on a draft of its technical advice in July 2017.

ESMA believes that the differentiation between the concepts of "market maker" under the revised MiFID and "market making activities" under the SSR should remain, but recommends revising the definition of "market making activities" under the SSR to ensure that certain activities carried out on a trading venue and OTC can benefit from the SSR exemption for market making activities. ESMA recommends extending the scope of the market making exemption to additional instruments that are currently only traded OTC and hedged through shares and sovereign debt.

For a firm to benefit from the SSR "market making activities" exemption it must be a member of the market on which it deals as principal in one of the capacities listed under the definition of market making activities in the financial instrument for which it notifies the exemption. ESMA proposes removing the membership requirement for OTC market-making activity. ESMA also suggests that market makers on trading venues be required to be members or participants of only one of the trading venues where their market-making activity takes place, rather than all of the trading venues.

To improve the procedure for imposing short-term bans on short selling in case of a significant decline in price, ESMA proposes changing the scope of the ban to include a ban on entering into or increasing net short positions. It also proposes allowing only the national regulator of the most relevant market to be able to adopt a short-term ban applicable across Europe.

ESMA's technical advice also includes recommendations on the transparency of net short positions and reporting requirements.

The Final Report is available at: https://www.esma.europa.eu/sites/default/files/library/technical_advice_on_the_evaluation_of_certain_aspects_of_the_ssr.pdf and the July Consultation is available at: http://finreg.shearman.com/european-securities-and-markets-association-consu.

European Commission Consults on Improving the SME Markets

On December 18, 2017, the European Commission published a consultation paper in which it seeks views on the main challenges for SME-dedicated markets and possible changes to EU legislation that might help build the EU high-growth SME markets. The consultation paper follows previous consultations and papers relating to the Capital Markets Union Action Plan.

The consultation focuses on SME Growth Markets, a new type of trading venue introduced under the Markets in Financial Instruments package. The consultation paper is split into two sections, the first of which considers the main drivers behind the downward trend of SME initial public offerings and bond issuances. The second section considers specific regulatory barriers to SME markets, small issuers and the local ecosystems surrounding SME markets. In particular, the Commission is seeking views on the MiFID II provisions which set the scope of SME Growth Markets, the market requirements for SME issuers to be assisted by a key adviser, delisting rules on SME Growth Markets and transfer of listings.

In addition, the consultation paper considers whether steps can be taken to alleviate the administrative burden on SME Growth Market issuers including assessing some of the requirements in MAR relating to management transactions,

insider lists, disclosure of inside information, reporting obligations and market soundings. The discussion on the local ecosystems around SME Growth Markets focuses on the "tick size" regime under MiFID II, the possibility of creating a liquidity provision contract across the EU (as an accepted market practice under MAR). It also covers the merits, if any, of free float requirements for SMEs, regulatory barriers to institutional investments in SME shares or bonds listed on SME Growth Markets and credit assessments and ratings for SME bond issuers.

Responses to the consultation are requested by February 26, 2018.

The consultation paper is available at: https://ec.europa.eu/info/sites/info/files/2017-barriers-listing-smes-consultation-document_en.pdf.

European Securities and Markets Authority Consults on Regulatory Technical Standards for EU Prospectuses

On December 15, 2017, ESMA launched a consultation on draft RTS under the new EU Prospectus Regulation which entered into force on July 20, 2017. ESMA seeks feedback on the draft RTS in relation to: key financial information for the prospectus summary; data for the classification of the prospectus and how to ensure that such data is machine readable; advertisements; supplements; and publication of the prospectus.

ESMA invites responses to the consultation by March 9, 2018. ESMA will then finalize the draft RTS for submission to the European Commission by July 21, 2018.

The consultation paper (ESMA31-62-802) is available at: https://www.esma.europa.eu/sites/default/files/library/esma31-62-802_consultation_paper_on_draft_rts_under_the_new_prospectus_regulation.pdf.

People

Norman Williams Appointed as Deputy Comptroller for Economic and Policy Analysis

On January 2, 2018, the U.S. OCC announced that Norman Williams has been appointed Deputy Comptroller for Economic and Policy Analysis. Mr. Williams, who joined the OCC in 2006, will succeed Gary Whalen who has retired, and will oversee the Industry and Regional Analysis, International Analysis and Banking Condition and Policy Analysis divisions at the OCC, which conduct research and analysis with respect to financial and economic risks faced by national banks and federal savings institutions. Prior to his time at the OCC, Mr. Williams served as the Chief of the Economic Analysis Section at the U.S. Federal Deposit Insurance Corporation. This appointment took effect on January 7, 2018.

The announcement of Mr. Williams's appointment is available at: https://www.occ.treas.gov/news-issuances/news-releases/2018/nr-occ-2018-1.html.

UK Financial Conduct Authority New Chair - Charles Randell CBE

On January 5, 2018, HM Treasury announced that Charles Randell CBE will become chair of the FCA and the Payment Systems Regulator from April 1, 2018. He will replace the outgoing chair, John Griffith-Jones.

HM Treasury's announcement is available at: https://www.gov.uk/government/news/new-chair-of-the-financial-conduct-authority-announced.

Upcoming Events

January 10, 2018: U.S. Foreign Affairs Committee hearing - Sanctions and Financial Pressure: Major National Security Tools.

January 10, 2018: U.S. House Financial Services Committee hearing - A Further Examination of Federal Reserve Reform Proposals.

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

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

January 23, 2018: public hearing on EBA consultation on Amended Technical Standards for Benchmarking of Internal Models under the CRD

February 5, 2018: Public hearing on EBA discussion paper on EU implementation of the revised market risk and counterparty credit risk frameworks

February 19, 2018: PRA and FCA New Bank Start-up Unit Seminar

February 19, 2018: public hearing on EBA consultation on draft RTS for risk retention under the STS Regulation

March 22, 2018: U.K. Government's second annual International Fintech Conference

Upcoming Consultation Deadlines

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

January 14, 2018: U.K. Competition & Markets Authority consultation on its 2018/2019 annual plan

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

January 19, 2018: FCA consultation on removing non-Handbook guidance superseded by MiFID II.

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

January 26, 2018: U.K. Banking Standards Board consultation on what good banking outcomes look like for consumers

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

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

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

January 31, 2018: EBA consultation on Amended Technical Standards for Benchmarking of Internal Models under the CRD

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

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

February 5, 2018: Basel Committee consultation on a proposed technical amendment to the NSFR

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

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

February 23, 2018: European Commission proposals to revise the prudential regime for investment firms

February 26, 2018: European Commission consultation on SME listing

February 27, 2018: PRA consultation on authorization and supervision of international banks (CP29/17)

February 27, 2018: PRA consultation on authorization and supervision of international insurers (CP30/17)

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

March 5, 2018: Comments to Federal Reserve Board's Proposed Regulation M Revisions due

March 5, 2018: Comments to Federal Reserve Board's Proposed Call Report Revisions due

March 6, 2018: PRA consultation on proposed updates to the Pillar 2 reporting requirements

March 6, 2018: PRA consultation on model risk management principles for stress testing

March 9, 2018: Basel Committee discussion paper on the regulatory treatment of sovereign exposures

March 9, 2018: ESMA consultation on draft RTS under the new Prospectus Regulation (ESMA31-62-802)

March 15, 2018: Comments to Federal Reserve Board's proposed guidance clarifying risk management supervisory expectations for large financial institutions due

March 15, 2018: EBA Discussion Paper on EU implementation of the revised market risk and counterparty credit risk frameworks

March 15, 2018: EBA consultation on draft RTS for risk retention under STS Regulation

March 15, 2018: EBA consultation on draft RTS on homogeneity of underlying exposures in STS securitizations under the STS Regulation

March 19, 2018: ESMA consultation on draft technical standards on the content and format of the "Simple, Transparent and Standardized" notification under the STS Regulation

March 19, 2018: ESMA consultation on draft technical standards on disclosure requirements, operational standards and access conditions under the STS Regulation

March 19, 2018: ESMA consultation on draft technical standards on third-party firms providing STS verification services under the STS Regulation

March 23, 2018: Basel Committee consultation on revised principles for supervisory and bank stress testing

April 9, 2018: PRA's proposals on MREL reporting

This newsletter is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. If you wish to receive more information on the topics covered in this publication, you may contact your usual Shearman & Sterling representative or any of the following:

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