SHEARMAN & STERLING LLP

FINANCIAL INSTITUTIONS ADVISORY & FINANCIAL REGULATORY GROUP
NEWSLETTER

NOVEMBER 15, 2017

Financial Regulatory Developments Focus

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

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

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

Bank Prudential Regulation & Regulatory Capital

Acting US Comptroller of the Currency Discusses Removing the Separation Between Banking and Commerce

On November 8, 2017, Acting Comptroller of the US Office of the Comptroller of the Currency Keith Noreika questioned the US regulatory requirement for banks to maintain a separation between banking and commerce. Noreika noted that the Glass-Steagall Act was enacted at a time when there were very few banks, distinguishing today's economy where there are many more banks that are subject to a "robust regulatory regime." He suggested that preventing commercial firms from engaging in banking activities has concentrated US banking operations in a few large banks. He reiterated a commonly expressed view that the financial crisis demonstrated that the separation of banking and commerce does not make the financial system inherently safer. Noreika also rebuked calls to reinstate the Glass-Steagall Act, challenging the notion that the separation of commercial banking from investment banking in any way serves the best interest of the financial system and economy.

Acting Comptroller Noreika's speech is available at: https://occ.gov/news-issuances/speeches/2017/pub-speech-2017-134.pdf.

New Federal Reserve Governor Randal Quarles Calls for Fresh Look at Various Dodd-Frank Regulatory Requirements

On November 7, 2017, Randal Quarles made his first public address after being formally sworn in as the new Vice Chairman for Supervision of the US Board of Governors of the Federal Reserve System at The Clearing House's Annual Conference in New York. Although Quarles's remarks have not yet been posted publicly, he notably called for taking a "fresh look" at various Dodd-Frank regulatory requirements, including stress testing, living wills and the leverage ratio. Although he generally did not discuss any specifics, he indicated his support for improving transparency, including seeking input for how to improve the Federal Reserve's stress testing process. He also expressed support for tailoring regulation to reflect the risks associated with a bank's activities and not just its size. Specifically, he noted that making adjustments to the $50 billion threshold for enhanced prudential supervision under Section 165 of the Dodd-Frank Act are not dependent on Congressional action.

European Banking Authority Consults on Prudential Consolidation Methods

On November 9, 2017, the European Banking Authority launched a consultation on draft Regulatory Technical Standards on the methods of prudential consolidation under the Capital Requirements Regulation. The CRR provides that banks, investment firms, financial institutions and, when certain criteria apply, ancillary services undertakings, fall within the scope of the prudential consolidation framework. Banks and investment firms are required to fully consolidate all subsidiaries that are banks, investment firms and financial institutions. Different methods of consolidation, such as proportional consolidation, the equity method or the aggregation method, are allowed as an alternative to full consolidation.

The proposed draft RTS set out conditions and indicators for the application of different methods of consolidation. The proposed draft RTS also include indicators for banks and investment firms to use to identify undertakings that could lead to step-in risk. The inclusion of these indicators is a result of the publication by the Basel Committee on Banking Standards on October 25, 2017 of final Guidelines on the identification and management of step-in risk. Step-in risk is the risk that a bank decides to provide financial support to an unconsolidated entity that is under stress in the absence of, or in excess of, any contractual obligations to do so. The indicators in the proposed draft RTS are limited in scope because the purpose of the RTS is to establish methods of prudential consolidation under a Pillar I approach, whereas the Basel Guidelines follow a Pillar II approach. It is proposed that national regulators should consider the conditions and indicators set out in the proposed draft RTS to decide on the appropriate method of consolidation for a firm.

The consultation closes on February 9, 2018. Final draft RTS for submission to the Commission will be prepared on the basis of feedback to the consultation. The European Commission will then consider whether to adopt the final draft RTS.

The consultation paper is available at: http://www.eba.europa.eu/documents/10180/2019694/Consultation+Paper+on+RTS+on+methods+of+prudential+consolidation+%28EBA-CP-2017-20%29 and the Basel Committee's Guidelines on the identification and management of step-in risk are available at: https://www.bis.org/bcbs/publ/d423.pdf.

European Banking Authority Publishes Opinion on Regulatory Perimeter Issues under the EU Capital Requirements Framework

On November 9, 2017, the EBA published an Opinion and a Report on financial intermediaries and regulatory perimeter issues under the CRR and the Capital Requirements Directive. The Opinion and Report are a result of the EBA's up-to-date analysis of issues relating to non-bank financial intermediaries (referred to by the EBA as other financial intermediaries or OFIs) and the scope of EU-level and national prudential regulation. The Opinion and the Report provide the EBA's assessment of the use of the exemptions for certain entities from the CRDIV requirements, national approaches to prudential supervision of OFIs, the ambiguities around the definitions of 'ancillary services undertaking' and 'financial institution' in CRR and the need to update the list of activities that are part of the EU passporting regime.

The Opinion sets out the EBA's view on issues arising under the EU capital requirements framework that the European Commission, European Parliament and Council of the European Union should consider further in their current deliberations over the proposed amendments to the CRR and CRD.

CRD gives member states the discretion to exempt entities (such as saving companies, structured finance vehicles and hire purchase providers) that are not banks but which take deposits and other repayable funds from the public, provided that those entities are expressly covered by national law. The EBA considers that the proposal to remove that national discretion needs to be further substantiated by an impact assessment because some member states rely on it and because it may be too burdensome for these entities to become licensed as a bank.

The EBA notes that the prudential treatment of OFIs differs between member states and that some member states apply requirements similar to CRDIV whereas others apply bespoke requirements or no prudential requirements at all. The EBA does not recommend any regulatory intervention or a change to the scope of the EU framework, but states that the regulatory treatment of OFIs should continue to be monitored closely. This position is in line with the EBA's 2014 Opinion and Report on the regulatory perimeter applying to banks and the prudential treatment of OFIs.

On the definitions of 'financial institution' and 'ancillary services undertaking,' the EBA notes the Commission's attempts to clarify a number of issues that the EBA has highlighted in the past through Q&A and reports to the Commission. The EBA considers that there is a risk that regulatory consolidation rules could be inconsistently applied across the EU as a result of ambiguities in the interpretation of these terms. The EBA appeals to the EU legislative institutions to consider further possible amendments to these definitions. The EBA also considers that the list of activities that fall within the EU's passporting regime needs to be updated and that the changes could be considered in the current legislative debate.

The Opinion is available at: http://www.eba.europa.eu/documents/10180/2019769/Opinion+on+OFIs+%28EBA-Op-2017-13%29.pdf and the EBA's Report is available at: http://www.eba.europa.eu/documents/10180/1720738/Report+on+OFIs.pdf.

The Commission's Proposals for CRDV are available at: http://finreg.shearman.com/european-commission-proposes-draft-quotcrd5quot-a and the EBA's 2014 Opinion and Report is available at: https://www.eba.europa.eu/-/eba-publishes-an-opinion-on-the-perimeter-of-credit-institutions.

European Central Bank Highlights Challenges for Smaller Eurozone Firms

On November 8, 2017, the European Central Bank published a Report on the supervision of less significant institutions under the Single Supervisory Mechanism. The SSM is made up of the ECB and national regulators of Eurozone member states, and is responsible for the prudential supervision of all banks in the euro area. The ECB directly supervises the larger firms, classified as significant institutions, and national regulators directly supervise the less significant institutions, subject to the oversight of the ECB. The ECB is also responsible for certain common procedures, such as the granting and withdrawal of authorization and the acquisition of qualifying holdings in SSM firms. The ECB can issue guidelines, regulations or general instructions to the SSM national regulators or even take over the direct supervision of a less significant institution (at its own initiative or at the request of the national regulator).

The ECB's Report discusses the main concerns for less significant institutions, which include competition, and suggests that less significant firms may choose to consolidate businesses to improve profitability. The Report also sets out the steps that the SSM supervisory functions have taken towards harmonizing supervisory approaches to level the playing field, and highlights that the key challenge that needs to be addressed is the use of different accounting systems because that hinders comparability of data between the firms. Finally, the ECB indicates that it is developing specific policy positions and operational guidance on issues relevant to Brexit and the likely relocation of some activities of UK firms moving into the Eurozone.

The report is available at: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.reportlsisupervision2017.en.pdf.

European Commission Consults on Measures to Address Non-Performing Loan Build-Up in the EU

On November 10, 2017, the European Commission launched a consultation on proposals for statutory prudential backstops to address insufficient provisioning for newly originated loans that turn into non-performing loans. Since the 2007/08 financial crisis, there has been a build-up of NPLs in the EU, which impacts banks' viability and lending capabilities. The Commission is proposing to amend the CRR to introduce a requirement for all banks established in the EU to cover incurred and expected losses on newly originated loans that become non-performing. The requirements would be in the form of compulsory and time-bound prudential deductions of NPLs from own funds, and where that minimum coverage requirement is not met, a deduction of the difference between the level of the actual coverage and the minimum coverage from Common Equity Tier 1.

The European Commission has also asked the EBA to provide technical advice in relation to the Commission's consultation proposals. The advice must provide country-by-country estimates on additional/accelerated capital needs triggered for EU banks by the prudential backstops, taking into account, to the extent possible, expected increases in provisions as a result of the application of International Financial Reporting Standard 9 from January 2018. The advice must also assess the impact of certain design aspects too, including those that are relevant to the functioning, scope design and calibration of statutory prudential backstops. The Commission has requested the EBA to provide its report by November 27, 2017.

The Commission's consultation closes on November 30, 2017.

The Consultation Paper is available at: https://ec.europa.eu/info/sites/info/files/2017-non-performing-loans-backstops-consultation-document_en.pdf and the consultation page is available at: https://ec.europa.eu/info/node/63623.

The Commission's request for advice is available at: https://www.eba.europa.eu/documents/10180/2022642/EBA+Call+for+advice_NPLs_prudential+backstops.pdf/8f41cc22-c096-4ab9-ae5c-2101de848a05.

Brexit for Financial Services

US Regulator Warns EU about Proposed Extraterritorial Overreach

On November 6, 2017, Commodity Futures Trading Commission Chairman J. Christopher Giancarlo authored an opinion piece in the Wall Street Journal warning of potential consequences if the European Union mishandles Britain's impending exit from the EU. The European Commission's proposed amendments to the European Market Infrastructure Regulation and the regulation establishing the European Securities and Markets Authority would provide ESMA and the ECB with greater supervisory powers over third-country CCPs. Specifically, Chairman Giancarlo argued that the European Commission's proposed rulemaking that would authorize regulation of financial entities outside the EU by the ECB and ESMA would result in overlapping and uncoordinated regulation in US financial markets. Chairman Giancarlo believes this lack of harmonization and clear jurisdictional limitations could prove expensive and damaging to US economic growth and ultimately impact job growth. Additionally, Chairman Giancarlo suggests that submitting to European rules could set a dangerous precedent going forward which could result in further imposition of European costs and regulatory burdens on the US economy.

The article is available at: http://www.cftc.gov/PressRoom/SpeechesTestimony/giancarloopinion110617.

Enforcement

Bank of England Consults on Procedures for Decision Making in Contested Enforcement Cases

On November 10, 2017, following positive feedback to its consultation in 2016 on the establishment of an Enforcement Decision Making Committee, the Bank of England has published a consultation on the detailed statement of procedure and the necessary revisions to existing policies and procedures that will be required to implement the proposals.

The EDMC is being established as a direct response to a recommendation from HM Treasury arising from its review of enforcement decision-making at the UK regulators. HM Treasury had recommended the establishment of a functionally-independent decision-making committee composed of independent members with expertise suited to the Prudential Regulation Authority's regulatory focus. Once established, the EDMC will be the BoE's decision-making body in contested enforcement cases that relate to prudential regulation, financial market infrastructure and resolution. It will ensure the necessary functional separation between the BoE's investigation teams and decision-makers.

The consultation paper sets out detailed proposals on the EDMC's remit and operation and the selection, appointment, remuneration and governance of EDMC members. Comments on the consultation are requested by February 2, 2018.

The BoE Consultation Paper is available at:
http://www.bankofengland.co.uk/publications/Documents/other/edmc/cpedmc2017.pdf.

UK Financial Conduct Authority Decision to Ban Ex-Libor Trader Hayes Delayed Pending Criminal Review

On November 8, 2017, the Financial Conduct Authority announced that it has decided to prohibit former trader Tom Hayes from performing any function relating to any regulated activity in the financial services industry. The FCA stated that Mr. Hayes' conviction showed a lack of honesty and integrity on Mr. Hayes' part such that he is not a fit and proper person to perform functions relating to regulated activities.

Mr. Hayes was the first person in the world to be found guilty for LIBOR rigging. He is currently serving an 11-year sentence following his August 2015 conviction on eight counts of conspiracy to defraud in relation to his manipulation of Yen LIBOR.

The FCA's decision to ban Mr. Hayes will not take effect immediately. Mr. Hayes referred the matter to the Upper Tribunal and it has ruled that the FCA proceedings are stayed pending the decision of the Criminal Cases Review Commission on whether to refer Mr. Hayes' criminal conviction to the Court of Appeal. The Commission's decision is due in January 2018.

This is the first instance of a successful application for a stay of FCA prohibition proceedings where the individual in question has already been convicted. The Upper Tribunal's ruling permits the FCA to publish only specified sections of its Decision Notice, since Judge Timothy Herrington accepted Mr. Hayes' concerns about the risk of adverse publicity and prejudice if certain provisions of the Notice were published. The FCA has not yet published the permitted sections of the Decision Notice.

The Upper Tribunal Decision is available at: https://assets.publishing.service.gov.uk/media/5a0325ac40f0b60b048399f8/Tom_A_W_Hayes_v_FCA.pdf and the FCA's announcement is available at: https://www.fca.org.uk/news/press-releases/fca-decides-ban-tom-hayes.

Financial Market Infrastructure

UK Central Securities Depositaries Regulations 2017 Published

On November 7, 2017, HM Treasury published the Central Securities Depositories Regulations 2017, together with an explanatory memorandum. The Regulations implement, in part, certain Articles of the EU Central Securities Depositaries Regulation. The CSDR provides a harmonized regulatory and prudential regime for Central Securities Depositaries, harmonizes and increases the robustness and resilience of securities settlement arrangements and creates a single market for CSD services across the EU. The CSDR has come into full effect in stages since September 17, 2014, subject to a number of transitional provisions that have necessitated staggered implementation within UK legislation. These latest Regulations disapply certain overlapping provisions of the domestic regime and extend the enforcement regime under the Financial Services and Markets Act 2000 to grant additional enforcement powers to the BoE and the FCA. The Regulations create a new category of recognized body, known as a Recognized Central Securities Depository, and establish the procedures to be followed by persons acquiring control over RCSDs. Recognized investment exchanges, clearing houses and CSDs will be required to have appropriate procedures in place for the reporting of infringements. The Regulations also empower the BoE to make rules codifying the requirement that central counterparties notify the BoE of a cyber-incident. The Regulations take effect from November 28, 2017.

The Central Securities Depositaries Regulations 2017 (S.I. 2017/1064) are available at: http://www.legislation.gov.uk/uksi/2017/1064/pdfs/uksi_20171064_en.pdf and the Explanatory Memorandum is available at: http://www.legislation.gov.uk/uksi/2017/1064/pdfs/uksiem_20171064_en.pdf.

FinTech

US Securities and Exchange Chairman Jay Clayton Raises Concerns About Virtual Currency Offerings

On November 8, 2017, US Securities and Exchange Chairman Jay Clayton raised concerns about virtual currency offerings or so-called initial coin offerings. He noted that initial coin offerings bear many similarities to securities offerings by firms that are required to register with the SEC. However, he expressed concern that in many instances there is a significant lack of information about online platforms that list and trade the virtual coins and tokens that are offered in such initial coin offerings. Clayton highlighted the potential for misconduct, including price manipulation and trading practices. An SEC investigation into two initial coin offerings, announced in September, is ongoing. Earlier this year, the SEC's Office of Investor Education and Advocacy issued an investor alert warning about the risks associated with initial coin offerings.

Chairman Clayton's speech is available at: https://www.sec.gov/news/speech/speech-clayton-2017-11-08.

Funds

EU Extends the Scope of the Framework for Collective Investment in Unlisted SMEs

On November 10, 2017, a Regulation amending the European Venture Capital Funds Regulation and European Social Entrepreneurship Fund Regulation was published in the Official Journal of the European Union. This Amending Regulation makes amendments to the EuVECA Regulation and EuSEF Regulation in order to stimulate further venture capital and social investment. EuVECA and EuSEF funds have, since July 2013, provided a means for cross-border private investment in small- and medium-sized entities. Funds complying with these regulations receive a marketing passport which allows them to collect capital from investors across the EU, who are able to commit at least €100,000. EuVECA and EuSEF managers do not need to be authorized under the Alternative Investment Fund Managers Directive.

The Amending Regulation, which takes effect from November 30, 2017, makes a number of changes to the EuVECA Regulation and EuSEF Regulation in order to: (i) extend the range of managers eligible to market and manage EuVECA and EuSEF funds to include larger fund managers, i.e. those with assets under management of more than €500 million; (ii) expand EuVECA eligible assets, to allow investment in small mid-caps, and SMEs listed on SME growth markets (a new type of trading platform to be introduced when the revised Markets in Financial Instruments Directive and Markets in Financial Instruments Regulation come into effect from January 3, 2018). This is expected to allow more companies to benefit from EuVECA investments and make investments more attractive through greater diversification of risk; and (iii) decrease the costs by explicitly prohibiting fees imposed by national regulators of host Member States, simplifying registration processes and determining the minimum capital required to become a manager. The Amending Regulation also gives ESMA an oversight role to ensure that the funds are consistently registered and supervised.

The Amending Regulation (EU) 2017/1991 is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1991&from=EN.

MiFID II

European Securities and Markets Authority Consults on Amending Systematic Internalisers' Quote Rules

On November 9, 2017, ESMA published a consultation proposing amendments to RTS on the equity transparency obligations of trading venues and investment firms (Commission Delegated Regulation (EU) 2017/587, known as "RTS 1") under MiFIR. MiFIR requires Systematic Internalisers to make public firm quotes in equity instruments. The quotes must: (i) be at least equivalent of 10% of the standard market size for the quoted instrument; (ii) include both a bid and offer price; and (iii) reflect the prevailing market conditions for that instrument. RTS 1 specifies the concept of 'prices reflecting prevailing market conditions' as being 'close in price, at the time of publication, to quotes of equivalent sizes for the same financial instrument on the most relevant market in terms of liquidity.' ESMA is of the view that this specification needs to be amended because the quotes of an SI can only adequately reflect prevailing market conditions when the quotes reflect the minimum price increments ('tick sizes') quoted for a financial instrument on a trading venue.

ESMA is also seeking to make other changes to RTS 1 to correct changes that were made to the final draft RTS when published in the Official Journal of the European Union. ESMA considers that the changes may lead to inconsistent application of the requirements.

Feedback on the proposals is requested by January 25, 2018. Final draft RTS amending RTS 1 will be prepared on the basis of feedback to the consultation. The European Commission will consider whether to adopt the final draft RTS amending RTS 1. Despite the consultation, the requirements currently set out in RTS 1 will apply from January 3, 2018.

The consultation paper is available at: https://www.esma.europa.eu/press-news/consultations/consultation-proposed-amendment-mifid-ii-rts-1 and RTS 1 is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R0587.

Payment Services

EU Sets Out Rules for National Regulators on Passporting under the Revised Payment Services Directive

On November 11, 2017, a Delegated Regulation was published in the Official Journal of the European Union setting out RTS for the cooperation and exchange of information between EU national regulators that are the home and host states for payment institutions using the "passport" provided by the revised Payment Services Directive. Under PSD2, payment institutions can make use of the passport either to establish a branch in another Member State, or to provide services cross-border into another Member State. PSD2 will extend the definition of a "payment institution" to include new categories of third-party payment providers. The RTS set out detailed rules on how national regulators are to assess passport applications and how they should deal with disagreements. The RTS also set out the information that must be obtained and/or transmitted or communicated on a branch, services or agent passport application.

The RTS come into effect on December 1, 2017. The PSD2 passport will be available from January 13, 2018, which is the transposition deadline for PSD2.

The RTS ((EU) 2017/2055) is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2055&from=EN.

UK Payment Systems Regulator Consults on Reimbursement of Victims of Payment Scams

On November 7, 2017, the UK Payment Systems Regulator published a report on the initiatives it has engaged in with banks, the payment systems industry and the FCA to prevent or mitigate harm to consumers from scams which involve tricking people into sending money to fraudsters. This type of scam is known as an authorized push payment, or APP, scam and is the second biggest type of payment fraud reported in the UK behind card fraud. The PSR has previously investigated APP scams following a Which? super-complaint in 2016 and concluded in its response to the super-complaint that more needed to be done to address them.

The report outlines the progress made in industry-led initiatives that are underway and that, taken together, should help prevent APP scams, ensure payment service providers respond faster when they do happen and help in recovering consumers' money. These initiatives include introducing best practice standards, and Confirmation of Payee, sharing financial crime data and information and transaction data analytics. To ensure continued progress, the PSR has set reporting milestones with which the trade association UK Finance and the New Payment Systems Operator will need to comply from June 2018. The report also sets out for consultation a proposal by the PSR for an industry-led "contingent reimbursement model," to be implemented by the end of September 2018, which would complement existing informal arrangements used by PSPs to reimburse victims of APP scams. PSPs that adopted the contingent model would agree to reimburse victims under specified circumstances. The report outlines the high-level principles for the model and seeks feedback on how the model should be further developed, implemented and administered.

The FCA, which contributed to the PSR's report, has issued a response in support of the industry-led initiatives and stated that it intends to actively monitor the adoption, implementation and impact of the best practice standards. Comments on the consultation are requested by January 12, 2018.

The Report and Consultation is available at: https://www.psr.org.uk/sites/default/files/media/PDF/PSR-App-Scams-report-and-consultation.pdf and the Annexes are available at: https://www.psr.org.uk/sites/default/files/media/PDF/APP-scams-annexes.pdf.

The FCA Response to the Report and Consultation is available at: https://www.fca.org.uk/news/statements/fca-response-psr-paper-authorised-push-payment-scams and the PSR Response to Which? Super-complaint, December 2016 is available at: https://www.psr.org.uk/psr-publications/news-announcements/which-super-complaint-our-response-Dec-2016.

Final EU Guidelines on Information Required for Authorization Applications by Payment Institutions

On November 8, 2017, the EBA published final Guidelines on the information to be provided for the authorization of payment institutions and electronic money institutions, and for the registration of account information service providers. PSD2 sets out the information that must be submitted to national regulators with applications for authorization or registration. The Guidelines are divided into four sets, one for payment institutions, one for e-money institutions, one for AISPs and one for national regulators. The Guidelines cover, among other things, information requirements on an applicant's program of operations, business plans, evidence of initial capital, governance and internal control mechanisms and data protection. The Guidelines apply from January 13, 2018.

The Guidelines are available at: https://www.eba.europa.eu/documents/10180/2015792/Guidelines+on+Authorisations+of+Payment+Institutions+%28EBA-GL-2017-09%29_EN.pdf.

Sanctions

US Office of Foreign Assets Control Amends Cuba Sanctions Program, Implementing Trump Directive

On November 9, 2017, the Office of Foreign Assets Control amended the Cuban Assets Control Regulations to implement changes to the Cuba sanctions program announced by President Trump in June of this year, which aimed to reinforce certain policies that had been relaxed by the Obama Administration. Most significantly, President Trump directed OFAC to impose new travel restrictions and curtail transactions with businesses controlled by the Cuban military, intelligence, and security sectors— a prohibition many companies feared would heavily impact the tourism industry.

According to OFAC, the changes are "intended to channel economic activities away from the Cuban military, intelligence, and security services, while maintaining opportunities for Americans to engage in authorized travel to Cuba and support the private, small business sector in Cuba." The new regulations impose new travel restrictions on Americans and prohibit direct financial dealings with more than 80 hotels and dozens of other companies considered to be tied to Cuba's military, intelligence, or security services. The new restrictions, which became effective November 9, include:

- Prohibited Financial Transactions—the new regulations prohibit US persons (or persons subject to US jurisdiction) from engaging in most direct financial transactions with entities identified by the State Department on the Cuba Restricted List, published simultaneously with the amended regulations. Notably, commercial engagements in place prior to the State Department's listing of any entity will continue to be authorized, as will most previously arranged travel. Additionally, the prohibition does not apply to indirect financial transactions, such as bank transfers, where the person does not act as the originator or beneficiary on a transfer of funds.
- Trade and Commerce—relatedly, the Department of Commerce is establishing a general policy of denial for license applications to export items for use by entities identified in the Cuba Restricted List.
- New Travel Restrictions for Americans
  - People-to-People & Educational Travel—the new regulations de-authorize individual people-to-people nonacademic educational travel, as well as individual academic educational travel, to Cuba by US persons. Instead, all such travel must be conducted under the auspices of a US government-approved organization that sponsors such exchanges to promote people-to-people contact, and travelers must be accompanied by a US representative of the sponsoring organization.
  - Support for Cuban People Travel—similarly, Americans engaging in travel under this category must engage a full-time schedule of activities which documents meaningful interaction with, and support for, individuals in Cuba, as defined in the CACR.

OFAC's announcement is available at: https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20171108.aspx and the Cuba Restricted List is available at: https://www.state.gov/e/eb/tfs/spi/cuba/cubarestrictedlist/index.htm.

People

US Financial Crimes Enforcement Network Names Kenneth Blanco Director

On November 8, 2017, the US Department of the Treasury announced Kenneth A. Blanco as Director of FinCEN, a bureau in Treasury's Office of Terrorism and Financial Intelligence. Blanco has 28 years of prosecutorial service, most recently serving as acting assistant attorney general of the US Department of Justice Criminal Division. FinCEN has been led by an acting director since Jennifer Shasky Calvery stepped down in May 2016. Blanco is expected to transition to his new role within the next month.

Randal K. Quarles sworn in as member of the Board of Governors of the Federal Reserve System and as Vice Chair for Supervision

On November 6, 2017, Randal K. Quarles was ceremonially sworn in as a member of the Board of Governors of the Federal Reserve System and as Vice Chair for Supervision. Following confirmation by the Senate, Vice Chair Quarles took office on October 13, 2017, to fill an unexpired term ending on January 31, 2018. His term as Vice Chair for Supervision ends on October 13, 2021.

Head of US Office of Financial Research Richard Berner to Step Down

On November 6, 2017, US Treasury Secretary Steven Mnuchin announced that Richard Berner, director of the Office of Financial Research, will step down effective December 31, 2017, one year ahead of the expiration of his term. Berner was the first director of the agency, which was created by the Dodd-Frank Act with the mission of collecting and analyzing data across financial agency jurisdictions. Berner was confirmed by the Senate on January 1, 2013, for a six-year term. Berner's successor has not yet been named.

Federal Reserve Bank of New York President Announces Retirement

On November 6, 2017, the US Federal Reserve Bank of New York announced that President and Chief Executive Officer William C. Dudley plans to retire in mid-2018, to ensure that a successor is appointed before his term ends in January 2019. Dudley joined the FRBNY in 2007 as executive vice president and head of the Markets Group, and was named the 10th president and CEO of the FRBNY on January 27, 2009. He was appointed for his first full term as president and CEO in 2011 and reappointed in 2016. The President of the FRBNY is limited to a ten-year term, and contemporaneously serves as Vice Chairman of the Federal Reserve's top policy-making body, the Federal Open Market Committee.

Upcoming Events

November 16, 2017: Partially open meeting of the US Financial Stability Oversight Council to discuss its rules under the Freedom of Information Act and efforts to find an alternative to LIBOR

November 17, 2017: EBA public hearing on significant risk transfer in securitization

November 24, 2017: European Commission public hearing on European corporate bonds markets

November 28, 2017: EBA 6th Annual Research Workshop—the future role of quantitative models in financial regulation

November 30, 2017: ECB public hearing on proposed Guidance on quantitative supervisory expectations concerning the minimum levels of prudential provisions expected for non-performing exposures

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

Upcoming Consultation Deadlines

November 27, 2017: European Commission consultation on an Inception Impact Assessment for feedback on the possible introduction of legislation for crowdfunding and peer-to-peer lending

November 30, 2017: 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

November 30, 2017: ESMA consultation on Guidelines for non-significant benchmarks

November 30, 2017: European Commission consultation on proposals for statutory prudential backstops to address NPL build-up

December 8, 2017: ECB consultation on proposed Guidance on quantitative supervisory expectations concerning the minimum levels of prudential provisions expected for non-performing exposures

December 19, 2017: EBA consultation on significant risk transfer in securitization

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

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

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

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

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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