SHEARMAN & STERLING

FINANCIAL REGULATORY DEVELOPMENTS FOCUS

MAR 8, 2018
ISSUE 9/2018

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.

IN THIS ISSUE

AML/CTF, Sanctions and Insider Trading

Final EU Standards on Cooperation Among National Regulators Under the Market Abuse Regulation

On February 27, 2018, a Commission Implementing Regulation providing Implementing Technical Standards on the procedures and forms for exchange of information and assistance between national regulators under the Market Abuse Regulation was published in the Official Journal of the European Union. MAR, which entered into force on July 3, 2016, requires national regulators to cooperate with each other in investigations and on supervision and enforcement matters by exchanging information, taking statements from individuals, conducting on-site inspections or investigations and in the recovery of monetary sanctions. The new ITS describe the procedures to be followed by national regulators when making, acknowledging, processing and replying to requests for assistance and when unsolicited assistance is provided and contain standard forms for national regulators to use when doing so.

The ITS enter into force on February 28, 2018 and apply directly across the EU.

The Commission Implementing Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0292&from=EN.

Bank Prudential Regulation & Regulatory Capital

US Federal Reserve Board Vice Chairman for Supervision Discusses Regulatory Agenda for Foreign Banking Organizations

On March 5, 2018, Randal Quarles, U.S. Board of Governors of the Federal Reserve System Vice Chairman for Supervision, discussed the need to examine post-crisis reforms. Focusing on post-crisis regulations that impact foreign banking organizations operating in the U.S., he noted that regulations should be reviewed to ensure not only efficacy, but also efficiency and transparency. Quarles noted that the Federal Reserve Board will consider additional tailoring and flexibility in light of the impact of regulations on foreign banking organizations. He highlighted two key regulatory examples: enhanced prudential standards and the Volcker Rule. With respect to enhanced prudential standards, Vice Chairman Quarles noted that the Federal Reserve Board has been sensitive to the unique features of non-U.S. financial institutions operating in the United States, noting specific circumstances where the Federal Reserve Board has exercised flexibility to accommodate these differences, including allowing the global risk committee to serve as the risk committee for U.S. operations and recognizing that effective home country stress testing regimes can take many forms.

Further, Quarles noted that the Federal Reserve Board has retained flexibility in the implementation of the intermediate holding company requirement, and just recently approved an application for a foreign banking organization to establish a second intermediate holding company. Vice Chairman Quarles also discussed perceived shortcomings with the Volcker Rule, stating that while the premise is simple, the regulation itself is very complex and "not working well." Vice Chairman Quarles stated that the Federal Reserve Board is actively working with the other Volcker Rule regulatory agencies to find ways to simplify and streamline the Volcker Rule, particularly for institutions that do not have large trading operations, and that the agencies are working on a proposal for public comment that would make "material changes" to the regulation. Specific areas of focus include making definitions of key terms such as "proprietary trading" and "covered fund" as well as the exemption for market-making and the so-called "RENT'D" test as simple and clear as possible. With respect to the Volcker Rule's impact on non-U.S. financial institutions operating in the United States, Vice Chairman Quarles noted that the agencies are considering changes to the complexity of the exemptions available to foreign banking organizations for trading and engaging in covered fund activities solely outside the United States and the Volcker Rule compliance regime. He also stated that he would expect the

enforcement action stay that the agencies granted to foreign funds that are organized outside of the U.S. and offered solely to foreign investors last summer to be extended.

The full text of Vice Chairman Quarles's remarks is available at: https://www.federalreserve.gov/newsevents/speech/quarles20180305a.htm.

US House of Representatives Votes to Pass Bill on Operational Risk Capital Requirements for Financial Institutions

On February 27, 2018, the U.S. House of Representatives voted 245-169 in favor of passing H.R. 4296. The bill prohibits federal financial regulators from establishing operational risk capital requirements for financial institutions unless the requirements are based upon, and appropriately sensitive to, the risks posed by the institution's current business and operations. The requirements also must be forward-looking, rather than focused on historical losses of the financial institution, and provide for adjustment to capital requirements based upon the operational risk mitigating activities of the financial institution. The bill was originally part of the larger Financial CHOICE Act, which passed the House in June 2017. The bill was read in the U.S. Senate and referred to the U.S. Senate Committee on Banking, Finance, & Urban Affairs.

The full text of the bill is available at: https://www.congress.gov/115/bills/hr4296/BILLS-115hr4296rfs.pdf.

European Central Bank Consults on Draft Guides to Assessing Adequacy of Internal Capital and Liquidity

On March 2, 2018, the European Central Bank published two consultations on draft guides on the Internal Capital Adequacy Assessment Process (ICAAP) and the Internal Liquidity Adequacy Assessment Process (ILAAP). The draft Guides, which will be relevant to institutions within the Single Supervisory Mechanism, are designed to assist institutions in strengthening their ICAAPs and ILAAPs and encourage the use of best practices by explaining in greater detail the ECB's expectations.

The draft ICAAP and ILAAP Guides each set out seven principles that have been derived from the relevant provisions of the Capital Requirements Directive and that will be considered, among other things, by the ECB in the assessment of each institution's ICAAP or ILAAP as part of the Supervisory Review and Evaluation Process. Frequently Asked Questions have also been published alongside the draft guides.

In addition to the draft Guides and relevant EU law and national law, the ECB also encourages institutions to take into account other relevant publications from the European Banking Authority and international fora such as the Basel Committee on Banking Supervision and the Financial Stability Board.

Feedback on the draft guides is requested by May 4, 2018. The ECB also proposes to hold a public hearing on the consultations on April 24, 2018.

The draft ECB Guide to ICAAP is available at: https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/icaap_ilaap/ssm.icaap_guide_201803.en.pdf, the draft ECB Guide to ILAAP is available at: https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/icaap_ilaap/ssm.ilaap_guide_201803.en.pdf and the Frequently Asked Questions are available at: https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/icaap_ilaap/ssm.ilaap_guide_201803.en.pdf.

Basel Committee Proposes Revisions to Pillar 3 Disclosure Framework

On February 27, 2018, the Basel Committee on Banking Supervision published a consultation on its proposals for the third phase of the Pillar 3 Framework. Pillar 3 comprises a set of quantitative and qualitative

disclosure requirements applicable to banks in relation to capital, risk exposures and risk assessment processes, which are designed to allow other market participants to assess each bank's capital adequacy.

The Pillar 3 framework was last updated in March 2017, following a Basel Committee review. The Basel Committee now proposes some revisions and additions to the Pillar 3 framework which result from the finalization of the Basel III framework in December 2017. The consultation sets out revised disclosure requirements for: credit risk (including disclosures for prudential treatment of problem assets); operational risk; leverage ratio; credit valuation adjustment (CVA); and for overview templates on risk management, risk-weighted assets (RWA) and key prudential metrics. The consultation also sets out new disclosure requirements to benchmark the RWA outcomes of banks' internal models with RWA calculated according to the standardised approaches.

The Basel Committee believes disclosure of information by banks on encumbered and unencumbered asset breakdowns is meaningful to users of Pillar 3 data, as this information enables a preliminary overview on the extent to which a bank's assets remain available to creditors in the event of insolvency. To capture this information, the Basel Committee proposes to introduce a new template for banks to disclose information on their encumbered and unencumbered assets.

The Basel Committee is also proposing new disclosure requirements to provide users of Pillar 3 data with information on the capital ratio of a bank that would result in national supervisors imposing constraints on capital distributions. The template for this disclosure will provide that the disclosure would be mandatory for banks only when required by their national supervisors.

Finally, Template CC1, which was introduced in March 2017 to provide for disclosures on the composition of a bank's regulatory capital, currently applies at the level of the consolidated group. The BCBS seeks feedback on the advantages and disadvantages of expanding the scope of application of Template CC1 to resolution groups.

Comments on the consultation are invited by May 25, 2018.

The consultation is available at: https://www.bis.org/bcbs/publ/d432.pdf and the feedback form is available at: https://www.bis.org/bcbs/commentupload.htm.

European Systemic Risk Board Final Report and Opinion on Use of Structural Macroprudential Instruments in the EU

On February 27, 2018, the European Systemic Risk Board published a final report setting out proposed amendments to the ESRB Handbook on Operationalising Macro-prudential Policy and policy proposals on the legal framework of the systemic risk buffer and the structural buffers for global systemically important institutions (G-SIIs) and O-SIIs.

O-SIIs are institutions that fall short of classification as G-SIIs, but whose failure would have a significant negative effect on the financial system, either at EU level or at the level of an EU Member State. Institutions identified as O-SIIs attract stricter regulatory treatment under the Capital Requirements Directive and Capital Requirements Regulation, in particular being subject to the "O-SII buffer," an institution-specific buffer which focuses on reducing the institution's probability of default.

The ESRB's final report has been prepared by the Expert Group of the ESRB's Instruments Working Group, which has analyzed the use of the macroprudential buffers in the EU over the past three years. The final report sets out the results of a stock-take of the use of the buffers and an evaluation of their effectiveness and efficiency and how the buffers interact. It then goes on to examine the macro-economic impact of the structural buffers and the cyclical buffers (namely, system-wide capital requirements and the counter-cyclical

buffer) and how structural and cyclical buffers interact. Finally, it sets out the ERSB's recommendations on guiding principles that could be used for the application of the O-SII and systemic risk buffers and on interaction between the buffers.

The ESRB has a mandate under CRDIV and the CRR to adopt Opinions on the appropriateness of certain macroprudential policy measures before their adoption by EU Member States or the European Central Bank. Alongside the final report, the ESRB has also published an Opinion to the European Commission on structural macroprudential buffers, which builds on the response it provided in October 2016 to a European Commission consultation on the review of the macroprudential policy framework. The Opinion reaffirms the ESRB's view that the CRDIV/CRR legislation provides the essential elements for a sound EU macroprudential framework, but the ESRB makes a number of proposals to enhance the macroprudential toolkit.

The ESRB notes in the Opinion that there is no current consensus on the optimal level of capital requirements and has regard to a recent G20 statement recommending that further significant increases in bank capital requirements should be avoided. Accordingly, the proposals focus on improving the flexibility and transparency of how the structural buffers are applied, rather than on increasing their level.

In relation to the O-SII buffers, the ESRB proposes: (i) an increase in the O-SII buffer cap; (ii) a substantial increase in the additional O-SII buffer cap for subsidiaries; and (iii) an ESRB recommendation providing additional guidance for the calibration of the O-SII buffer, including the scope of the buffer's application.

With regard to the systemic risk buffer (the SRB), the ESRB proposes that mandatory sequencing for its activation (known as the "pecking order") be abolished and the SRB be upgraded to the status of a dedicated instrument to address system-wide structural systemic risks not covered by the CRR. The ESRB also proposes adapting the framework to: enable national regulators (or other designated authorities) to use the SRB to target specific sources of risk; limit the application of the SRB to risks stemming from the systemic importance of individual institutions; and simplify and clarify the notification and approval procedure.

As regards the interaction between the structural buffers, the ESRB notes that the current CRDIV "accumulation rule" means that, if applied on a consolidated basis, only the higher of the G-SII buffer, O-SII buffer and the SRB is currently applicable to an institution. The ESRB considers that, instead, capital requirements related to measures that target different systemic risks should be cumulative. Measures targeting different risks should be accumulated, but—to avoid the double counting of risks—measures targeting the same risks should not.

The ESRB does not expect that adoption of its proposals would lead to significant impact on existing capital requirements for credit institutions.

The final report is available at: http://www.esrb.europa.eu/pub/pdf/reports/esrb.report180227_finalreportmacroprudentialinstruments.en.pdf, the Opinion is available at: http://www.esrb.europa.eu/pub/pdf/other/esrb.opinion180227_macroprudentialinstruments.en.pdf and the ESRB Handbook on Operationalising Macro-prudential Policy is available at: https://www.esrb.europa.eu/pub/pdf/other/esrb.handbook_mp180115.en.pdf.

The European Commission consultation on review of the EU macroprudential framework is available at: https://www.esrb.europa.eu/pub/pdf/other/esrb.handbook_mp180115.en.pdf and the ESRB's response to the European Commission consultation is available at: https://www.esrb.europa.eu/pub/pdf/other/20161024_ESRB_response_EC.en.pdf?9f455bfff182f9e0a5ea8024dcd41cf8.

Brexit for Financial Services

UK Prime Minister Speech on the UK's Future Economic Partnership With the EU

On March 2, 2018, the U.K. Prime Minister delivered her third major speech on the future partnership between the U.K. and the European Union following Brexit. In it, the Prime Minister restated the key elements of the U.K.'s negotiating stance and provided greater detail about the U.K.'s aims for a free trade agreement with the EU.

In a speech that has been welcomed by many commentators for its clarity, the Prime Minister was candid about the fact there are some "hard facts" to be accepted, one of which is that access to each other's markets may in certain ways be less than it is now. Two key aspects of the speech are of particular interest for financial services businesses and their advisers.

Firstly, the Prime Minister reaffirmed that existing models for free trade agreements would not work for the U.K.-EU agreement as they would significantly reduce market access for both sides. The U.K. will be seeking "the broadest and deepest possible partnership, covering more sectors and co-operating more fully than any free trade agreement anywhere in the world today." The Prime Minister questioned the logic of suggestions by the European Commission that only an "off the shelf" trade agreement will be available to the U.K., pointing out that the European Council's guidelines aspire to a balanced, ambitious and wide-ranging deal with common rules on a number of areas to ensure fair and open competition. The Prime Minister envisages that the "deep and comprehensive" agreement with the EU will need to include commitments reflecting the extent to which the U.K. and EU economies are entwined. Disputes should be settled by an independent arbitration mechanism, as is common in free trade agreements, in order that the sovereignty of both the U.K. and the EU can be respected—it would not be acceptable for disputes to be settled by the court of either party.

Secondly, the Prime Minister confirmed that the U.K. would not be seeking passport rights for financial services, as these rights are intrinsic to the EU single market. The U.K. will not be seeking to retain single market membership, as this would require it to implement new EU legislation automatically without having had input into the drafting of that legislation. The U.K. cannot simply be a "rule-taker" while it bears responsibility for financial stability of the world's most significant financial centre and its taxpayers bear the associated risk. The Prime Minister stated that the U.K. and EU will need a "collaborative, objective framework that is reciprocal, mutually agreed and permanent and therefore reliable for businesses." Access to each other's markets should be based on the U.K. and the EU maintaining the same regulatory outcomes over time. There would be scope for the U.K.'s Parliament to take decisions in the future over whether to remain in alignment or to accept any consequences—such as loss of market access—should it diverge.

The U.K. Chancellor of the Exchequer is expected to deliver a speech on March 7, 2018 setting out in greater detail the U.K. Government's view of how it is possible to include services within a future U.K.-EU trade deal.

The Prime Minister's speech is available at: https://www.gov.uk/government/speeches/pm-speech-on-our-future-economic-partnership-with-the-european-union.

Competition

UK Competition and Markets Authority Publishes Working Paper on Its Investment Consultancy Investigation

On March 1, 2018, as part of its market investigation into the supply and acquisition of investment consultancy services and fiduciary management services, the U.K. Competition and Markets Authority published the first in a series of working papers on specific aspects of the investigation, as envisaged by the progress report it

published in February 2018. The working paper sets out the CMA's analysis and emerging findings to date in respect of the information available to pension trustees on the fees and quality of investment consultants and fiduciary managers. It should be read together with the issues statement for the investigation, which was published in September 2017. The working paper also provides an update on the CMA's developing thinking on potential remedies that might be applied in the event that the CMA was to find an adverse effect on competition. Remedies being considered by the CMA include guidance and off-the-shelf materials for running better tenders, standardized information for prospective clients in response to tenders, better fee information, standardized performance metrics and stronger service quality metrics.

The evidence reviewed by the CMA so far indicates that competitive processes are not providing customers with the necessary information to judge the value for money of investment consultants and fiduciary managers. The potential competition concern with this is that customers may not be well-equipped to choose, and subsequently monitor the performance of, their provider and, in turn, to drive competition between investment consultants, and between fiduciary managers.

The CMA invites comments on the proposed remedies, and on some specific questions about the design of the remedies, by March 22, 2018.

The working paper is available at: https://assets.publishing.service.gov.uk/media/5a96db4ae5274a5b87c30054/icm-information-on-fees-and-quality.pdf, details of the issues statement are available at: http://finreg.shearman.com/uk-competition-and-markets-authority-highlights-p and the February 2018 progress report is available at: http://finreg.shearman.com/uk-competition-authority-updates-stakeholders-on-.

Conduct & Culture

UK Regulator to Consult on Expanded Financial Services Register Under the Senior Managers & Certification Regimes

On February 26, 2018, the Financial Conduct Authority announced that it will be putting forward proposals for aligning the Financial Services Register with the expanded Senior Managers & Certification Regimes. The SM&CR has been in place for banks, building societies, credit unions and PRA-designated investment firms since March 2016, whilst certain insurers have been subject to the separate Senior Insurance Managers Regime. The remainder of authorized firms have continued to be subject to the Approved Persons Regime. The FCA recently consulted on expanding the existing SM&CR to all other authorized firms.

Under the SM&CR, the FCA only approves Senior Managers and it is only these individuals that appear in the FS Register. The Certification Regime requires firms to certify that all individuals in roles which pose a risk of significant harm are "fit and proper."

Feedback on the proposals to extend the SM&CR indicated that there would be public value in including details of certification of employees and other important individuals at firms in the FS Register. The FCA intends to consult in the Summer on implementing that feedback. If these proposals are implemented, non-executive directors, financial advisers, traders and portfolio managers would appear in the revised FS Register.

The FCA's statement is available at: https://www.fca.org.uk/news/statements/fca-statement-proposals-introduce-public-register and the proposals to extend the SM&CR are available at: http://finreg.shearman.com/uk-regulators-consult-further-on-extension-of-ind.

Consumer Protection

UK Payment Systems Regulator to Proceed With Plans to Reimburse Payment Scam Victims

On February 28, 2018, the U.K. Payment Systems Regulator published the outcome of the consultation it launched in November 2017 on a contingent reimbursement model for the victims of so-called "authorized push payment" scams. That consultation, which closed on January 12, 2018, outlined high level principles for the CRM and requested input from stakeholders on how the model should be further developed, implemented and administered.

Taking into account responses to the consultation, the PSR proposes to proceed with the CRM model and will establish a dedicated steering group to develop it, in the form of an industry code for reimbursement of APP scam victims. The steering group will be comprised of representatives from key stakeholder groups, particularly consumer representatives and PSPs, with oversight and support from the PSR. Other relevant regulatory and governmental bodies will also be involved as observers.

The PSR intends that the steering group should produce an interim code by September 2018. The Financial Ombudsman Service will then start taking into account the code when determining consumer complaints about APP scams. There will then be a further round of consultation, after which the final industry code is expected to be in place in early 2019.

The outcome of the November 2017 consultation is available at: https://www.psr.org.uk/sites/default/files/media/PDF/Outcome_of_CRM_Consultation_Feb_2018.pdf, the PSR press release is available at: https://www.psr.org.uk/psr-publications/news-announcements/PSR-confirms-plans-to-protect-victims-of-payment-scams and the November 2017 consultation is available at: http://finreg.shearman.com/uk-payment-systems-regulator-consults-on-reimburs.

Cybersecurity

US Federal Reserve Board Vice Chairman for Supervision Discusses Financial Regulation and Cybersecurity

On February 26, 2018, Randal Quarles, U.S. Board of Governors of the Federal Reserve System Vice Chairman for Supervision, provided brief remarks at the Financial Services Roundtable 2018 Spring Conference. Vice Chairman Quarles noted the importance of reviewing the post-crisis regulatory regime to determine which regulations may not be functioning effectively or as intended, and make changes, as necessary. He noted the importance of evaluating the costs and benefits of regulatory initiatives as well as evaluating their effect on both the resiliency of the financial system and on credit availability and growth. He focused in particular on the topic of cybersecurity, which he remarked is a high priority for the Federal Reserve Board. Given the dynamic and highly sophisticated nature of cyber attacks, Vice Chairman Quarles emphasized the need for collaboration in this area, both among private sector stakeholders and between the private sector and federal financial regulators. He noted that the Federal Reserve Board is continuing to work with other financial regulatory agencies to harmonize cyber risk-management standards and supervisory expectations to align them with existing best practices such as the National Institution of Standards and Technology's Cybersecurity Framework.

The full text of Vice Chairman Quarles's remarks is available at: https://www.federalreserve.gov/newsevents/speech/quarles20180226b.htm.

Derivatives

Federal Reserve Bank of New York Announces Plans to Begin Publication of Treasury Repo Reference Rates on April 3, 2018

On February 28, 2018, the Federal Reserve Bank of New York announced it will begin publication of three Treasury repo reference rates on April 3, 2018. The rates will reflect data from the previous day and will be published each day at approximately 8:00 a.m. Eastern Time.

These rates include the Secured Overnight Financing Rate (SOFR), which will be based on triparty repo data from Bank of New York Mellon and cleared bilateral and GCF Repo data from the Depository Trust & Clearing Corporation; the Triparty General Collateral Rate (TGCR), which will solely include triparty repo data; and the Broad General Collateral Rate (BGCR), which will be based on triparty repo data and GCF Repo data. In December, the Alternative Reference Rates Committee recommended SOFR as an alternative to U.S. dollar LIBOR in certain new U.S. dollar derivatives and other financial contracts.

Further, the New York Fed announced that on April 3, 2018 it will publish additional information regarding the administration of the reference rates, including contingency plans related to data sufficiency, the revision policy and oversight of the rates.

The Federal Reserve Bank of New York's statement is available at: https://www.newyorkfed.org/markets/opolicy/operating_policy_180228.

Enforcement

UK Jury Returns Guilty Verdict in First Contested Failure to Prevent Bribery case

On March 1, 2018, the Crown Prosecution Service confirmed that a refurbishment company, Skansen Interiors Limited, had been found guilty of failure to prevent bribery under section 7 of the Bribery Act 2010.

This is the first contested case under section 7 of the Bribery Act, which criminalizes commercial organizations for failure to prevent bribery by persons associated with them. A defence to this offence is available if a company can show that it has adequate procedures to prevent bribery and Skansen unsuccessfully argued that it had such controls in place.

The CPS alleged that Skansen's managing director at the time bribed a project manager at a real estate company to award refurbishment contracts worth £6million to Skansen. In its defence, the company argued that it was a small business of around 30 people operating in a single location out of an open-plan office, and therefore did not need sophisticated controls for its procedures to constitute "adequate" ones under the Act. There were checks and balances in place relating to the payment of invoices. It also argued that the company ethos was for everyone to act honestly and ethically, with a number of policies referencing the need for employees to act in an open and honest manner.

The jury found that Skansen's controls did not constitute adequate procedures and returned a guilty verdict. The judge gave Skansen an absolute discharge, likely because it is now a dormant company with no assets. The individuals involved pleaded guilty to offences of bribery and being bribed under the Bribery Act but have not yet been sentenced.

UK Financial Conduct Authority Fines and Bans Former Trader for LIBOR Manipulation

A former trader at a major financial institution has received a £180,000 fine and been banned by the U.K. FCA from performing functions relating to regulated financial activity. This follows on from the FCA's £226.8

million fine against the institution in 2015 for its breach, in relation to LIBOR, of Principle 5 of the FCA Handbook, namely that "A firm must observe proper standards of market conduct."

The employee, who worked as a short-term interest rate derivatives trader, acted as the primary JPY LIBOR submitter for the institution. Between 25 July 2008 and 11 March 2010, the FCA found that the employee acted improperly and was knowingly concerned in the institution's breach of Principle 5 through:

I. Making requests to the institution's CHF LIBOR submitters, in an attempt to influence their LIBOR submissions;

II. Taking into account trading positions when making his own submissions for JPY LIBOR; and

III. Improperly agreeing with an external trader at another financial institution to make certain JPY LIBOR submissions at the request of the external trader.

The employee was originally issued with a Warning Notice in January 2014, but proceedings were stayed pending criminal investigations by the U.K. Serious Fraud Office into certain former employees of the institution. In its Final Notice on 15 February 2018, the FCA applied its policy on the imposition of financial penalties as set out in the FCA's Decision Procedure and Penalties Manual (DEPP), to determine the appropriate financial penalty for the employee.

In particular, the FCA stated that the need for deterrence justified a very significant fine, as well as the "extremely serious" nature of the breach which "could have caused serious harm to other market participants." The FCA also took into account the fact that the employee was a highly experienced market professional, and so he deliberately closed his mind to the risk that this behavior was contrary to proper standards of market conduct, acting recklessly and with a lack of integrity. Due to the employee's decision to settle prior to a decision notice, he qualified for a 10% (stage 3) discount under the FCA's executive settlement procedures, without which the FCA would have imposed a fine of £200,000.

In addition to the imposition of a fine, the FCA determined that the employee was not a fit and proper person to perform any regulated financial activity, owing to his lack of integrity. Accordingly, he has also been prohibited from carrying out any such functions in the future.

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

Payment Services

US Federal Reserve Board Announces Upcoming Conclusion of Secure Payments Task Force

On March 1, 2018, the U.S. Board of Governors of the Federal Reserve System announced that the Secure Payments Task Force will conclude its efforts this month with a final publication detailing the lifecycles and security profiles of today's primary payment methods. Established in 2015, the Secure Payments Task Force, which has engaged more than 200 financial institutions, payment service providers and other stakeholders, has made a number of contributions to improve the security and resiliency of payment systems, including identifying key security priorities, developing resources and documentation to educate stakeholders and providing feedback to the Federal Reserve Board.

The members of the Secure Payments Task Force will transition into the Fed Payments Improvement Community, a network established to provide stakeholders with opportunities to engage in the Federal Reserve Board with respect to its payment improvement initiatives.

The full text of the Federal Reserve Announcement is available at: https://www.federalreserve.gov/newsevents/pressreleases/other20180301a.htm.

Recovery & Resolution

Final EU Technical Standards on MREL Reporting by Resolution Authorities

On March 2, 2018, a Commission Implementing Regulation with Implementing Technical Standards supplementing the EU Bank Recovery and Resolution Directive was published in the Official Journal of the European Union. The BRRD requires national resolution authorities to set the minimum requirement for own funds and eligible liabilities (MREL) level and to notify the EBA of such decisions. The ITS outlines the common templates to be used and the procedures to be followed by a resolution authority when reporting to the European Banking Authority the MREL that it has set for each financial institution in its jurisdiction.

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. MREL is the EU equivalent of the standard for total loss-absorbing capacity (TLAC) set by the Financial Stability Board.

The common format for the reports will assist the EBA to monitor consistency in the application of the MREL framework across the EU and to assess any divergences in the levels of MREL set for comparable institutions across EU Member States.

The ITS is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0308&from=EN&_sm_au_=iVVHr05HPvN212DN.

Upcoming Events

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

March 22, 2018: European Commission high-level conference on financing sustainable growth

April 24, 2018: ECB public hearing (via telephone conference) on its consultation on draft guides to ICAAP and ILAAP

Upcoming Consultation Deadlines

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 12, 2018: FCA consultation on its approach to authorization

March 12, 2018: FCA consultation on its approach to competition

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 22, 2018: Competition and Markets Authority Working Paper on Investment Consultancy Investigation

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

March 23, 2018: FCA consultation on Handbook changes for implementation of the Money Market Funds Regulation

March 27, 2018: Comments to CFPB&'s Civil Investigative Demands request for information due

April 3, 2018: BoE consultation on new incident reporting rules for CCPs

April 9, 2018: PRA consultation on MREL reporting requirements

May 4, 2018: IOSCO Consultation - Conflicts of interest and associated conduct risks during the equity capital raising process

May 4, 2018: European Central Bank consultation on draft guides to ICAAP and ILAAP

May 7, 2018: PRA consultation on governance and risk management for algorithmic trading

May 16, 2018: PRA consultation on guidance on the eligibility of guarantees as unfunded credit protection for capital requirement purposes

May 25, 2018: Basel Committee on Banking Supervision consultation on revisions to Pillar 3 framework

June 20, 2018: FCA consultation on Model Driven Machine Executable Regulatory 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:

CONTACTS

BARNEY REYNOLDS
Partner
London
barney.reynolds
@shearman.com

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

RUSSELL SACKS
Partner
New York
rsacks
@shearman.com

THOMAS DONEGAN
Partner
London
thomas.donegan
@shearman.com

SUSANNA CHARLWOOD
Partner
London
susanna.charlwood
@shearman.com

DONNA PARISI
Partner
New York
dparisi
@shearman.com

NATHAN GREENE
Partner
New York
ngreene
@shearman.com

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

JOHN ADAMS
Partner
London
john.adams
@shearman.com

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

ELIAS ALLAHYARI
Associate
London
elias.allahyari
@shearman.com

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

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

AYSURIA CHANG
Associate
London
aysuria.chang
@shearman.com

TOBIA CROFF
Partner
Milan
tobia.croff
@shearman.com

DANIEL FROST
Associate
London
daniel.frost
@shearman.com

MATTHEW HUMPHREYS
Associate
London
matthew.humphreys
@shearman.com

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

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

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

HERVÉ LETRÉGUILLY
Partner
Paris
hletreguilly
@shearman.com

OLIVER LINCH
Associate
London
oliver.linch
@shearman.com

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

WILF ODGERS
Associate
London
wilf.odgers
@shearman.com

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

INYOUNG SONG
Associate
London
inyoung.song
@shearman.com

KOLJA STEHL
Counsel
London
kolja.stehl
@shearman.com

ELLERINA TEO
Associate
London
ellie.teo
@shearman.com

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