

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.

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AML/CTF, Sanctions and Insider Trading

UK Regulator Proposes Guidance on Obligations to Counter Insider Dealing and Market Manipulation

On March 27, 2018, the Financial Conduct Authority launched a consultation on adding a proposed chapter on insider dealing and market manipulation to its Financial Crime Guide. The Financial Crime Guide is not part of the FCA's rules but it is a guide to assist firms in implementing the regulator's rules. A firm that does not comply with the Guide is not necessarily deemed by the FCA to be in breach of the rules. However, the FCA expects firms to use the guide to inform their financial crime systems and controls.

The FCA is proposing to add a new chapter on insider dealing and market manipulation to the Financial Crime Guide. The EU Market Abuse Regulation, which applies directly across the EU, requires firms arranging or executing transactions to establish and maintain effective arrangements, systems and controls to detect and report suspicious transactions. The FCA emphasizes that the U.K. rules extend these obligations under MAR and require firms to also counter the risk of financial crime. The FCA explains that this "countering" obligation extends to insider dealing and market manipulation.

The consultation paper also covers other minor amendments proposed by the FCA, including updating the Guide to reflect the introduction of the Money Laundering Regulations 2017 and removing outdated references on Sanctions.

Responses to the consultation are due by June 28, 2018. The FCA intends the final revised Guide to come into effect on October 1, 2018.

The consultation paper is available at: <https://www.fca.org.uk/publication/guidance-consultation/gc18-01.pdf> and the existing Financial Crime Guide is available at: <https://www.handbook.fca.org.uk/handbook/FC/link/PDF.html>.

Bank Prudential Regulation & Regulatory Capital

US Federal Deposit Insurance Corporation Vice Chairman Thomas M. Hoenig Discusses Finding the Correct Regulatory Balance

On March 28, 2018, outgoing U.S. Federal Deposit Insurance Corporation Vice Chairman Thomas M. Hoenig discussed the importance of attaining meaningful regulatory relief without undermining the safety and soundness of the financial system. Citing a few historical examples, Vice Chairman Hoenig discussed the similarities among past crises, as well as the deregulatory attitude that has followed these crises once the economy begins to recover. Vice Chairman Hoenig noted that with a strong regulatory foundation, including strong capital and constraints on the reliance on government bail-outs, a number of costly administrative rules could be minimized or eliminated. One important group of regulations that Vice Chairman Hoenig discussed for retention was prudential standards, including maintaining at least a 10 percent minimum equity to total assets ratio. Vice Chairman Hoenig was critical of proposed legislative changes to the calculation of the supplemental leverage ratio, and with U.S. financial institution regulatory agencies implementing the new Basel Committee standards and corresponding reduction in capital, cautioning that the "United States should not engage in this race to the bottom." Vice Chairman Hoenig also cited the Volcker Rule, noting that it is an important concept that should not be eliminated for any group of banks. Instead, Vice Chairman Hoenig suggested possible means to simplify the reporting burden associated with the Volcker Rule, which he posited would reduce the regulatory burden of the Rule without having to carve out certain groups of financial institutions from compliance with the Rule altogether. Vice Chairman Hoenig asserted that with strong prudential standards in place, other regulatory burdens, such as the living will process, could be

reduced. Vice Chairman Hoenig was critical of the living will process, noting that living wills do not provide much more information over and above that which is already gleaned from the examination and stress testing process. Vice Chairman Hoenig also highlighted that the living will process, through the prevalence of the single-point-of-entry resolution strategy among larger financial institutions, has reinforced the too-big-to-fail concept by signaling to creditors of those institutions that they will be able to exit their positions in the event of a failure. Vice Chairman Hoenig closed by stating that regional and community banks are better positioned for regulatory relief than larger financial institutions, noting that he has provided a list of regulations that could be simplified or eliminated for regional and community banks, such as liquidity rules, the Comprehensive Capital Analysis and Review process, appraisal requirements and examination cycles, some of which are already under legislative review.

The full text of the Vice Chairman Hoenig's speech is available at:

<https://www.fdic.gov/news/news/speeches/spmar2818.html>.

European Central Bank Consults on Guide to Internal Models

On March 28, 2018, the European Central Bank began a consultation on the first chapter of a proposed guide to internal models. The Capital Requirements Regulation requires the ECB to assess and grant permission for banks directly supervised by the ECB to use internal models for credit risk, counterparty credit risk and market risk. The ECB's proposed guide aims to set out how the ECB intends to approach the assessment of whether a firm meets the necessary requirements for the permission to be granted.

The consultation covers only the first chapter of the proposed guide. This chapter is on general topics comprising overarching principles for internal models, implementation of the internal ratings-based approach, internal model governance, internal validation and audit, model use and change management as well as third-party involvement. The ECB intends to consult on model-specific chapters, including for credit, market and counterparty credit risks, at a later date.

The consultation closes on May 25, 2018.

The consultation paper is available at:

https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/internal_models/ssm.guidedgeneraltopics.en.pdf.

Brexit for Financial Services

UK Regulators Confirm Approach to Authorization and Supervision of International Banks, Investment Firms, Insurers and CCPs Under Brexit Transitional Agreement

On March 28, 2018, following the announcement on March 19, 2018 that a transitional period for Brexit had been agreed between the U.K. and the EU, the U.K. regulators published statements setting out their expectations regarding firms' preparations for the U.K.'s withdrawal from the EU. The agreed transitional period is from March 29, 2019 until December 31, 2020 and EU law will remain applicable in the U.K. during that time. Both the FCA and the Bank of England have stated that, subject to the ratification of the transitional agreement, firms carrying on regulated activities in the U.K. through an EU passport can plan to continue doing so during the implementation period on the same basis as they do now and that U.K. authorization would only be needed by the end of that period.

The BoE has also confirmed its approach to the authorization and supervision of international banks, designated investment firms and insurers. The Prudential Regulation Authority has published "Dear CEO" letters addressed to the CEOs and branch managers of banks, insurers and designated investment firms that

undertake cross-border activities between the U.K. and the rest of the EU, together with updated Policy Statements and Supervisory Statements on the PRA's approach to the branch authorization and supervision of EEA banks, insurers and designated investment firms. Following consideration of feedback to the PRA's consultation on updating its approach to branch authorization and supervision, the PRA confirms that it has not made any significant changes to the versions it consulted on, except that the threshold for liabilities protected by the Financial Services Compensation Scheme has been increased from £200 million to £500 million. The PRA's new approach for banks, investment firms and insurers comes into effect on March 29, 2018.

The PRA has not changed its current supervisory approach to U.K. subsidiaries of international banks. 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 cooperation with the home regulator and greater reassurance over resolvability. The PRA can also impose additional specific regulatory requirements at branch level.

The BoE has also published a "Dear CEO" letter addressed to CEOs of non-U.K. CCPs that provide services in the U.K. The BoE confirms that non-U.K. CCPs already providing services in the U.K. should be able to continue to do so until the end of the implementation period. The BoE encourages these CCPs to continue to engage with it on their future recognition and to consider how to best use the additional time for planning.

The FCA's statement is available at: <https://www.fca.org.uk/news/statements/fca-statement-eu-withdrawal-following-march-european-council> and the BoE's statement is available at: <https://www.bankofengland.co.uk/news/2018/march/update-on-the-regulatory-approach-to-preparations-for-eu-withdrawal>.

The PRA "Dear CEO" letter is available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/letter/2018/firms-preparations-for-the-uk-withdrawal-from-the-eu-update-march-2018.pdf>, the PRA's Policy Statement on the approach to bank branch authorization and supervision is available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2018/ps318.pdf> and the PRA's Supervisory Statement on the approach to bank branch authorization and supervision is available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2018/ss118.pdf>.

The BoE "Dear CEO" letter is available at: <https://www.bankofengland.co.uk/-/media/boe/files/letter/2018/ccps-preparation-for-the-uk-withdrawal-from-the-eu-update-march-2018.pdf>

The PRA's Policy Statement on the approach to insurer branch authorization and supervision is available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2018/ps418.pdf> and the PRA's Supervisory Statement on the approach to insurer branch authorization and supervision is available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2018/ss218.pdf>,

The Brexit transitional agreement is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/691366/20180319_DRAFT_WI THDRAWAL_AGREEMENT.pdf.

Consumer Protection

European Securities and Markets Authority Confirms Product Intervention

On March 27, 2018, the European Securities and Markets Authority confirmed that it will use its product intervention powers under the Markets in Financial Instruments Regulation to prohibit the marketing, distribution and sale of binary options to retail investors. It will also impose a number of restrictions on the marketing, distribution and sale of Contracts for Difference to retail investors. Both CFDs and binary options have given rise to significant investor protection concerns, due to their complexity, the lack of transparent information at the point of sale, the risk of significant loss for investors and the deployment of aggressive marketing techniques by providers and distributors of the products.

Under MiFIR, ESMA has the power to impose temporary prohibitions or restrictions on certain financial instruments, financial activities or practices when, among other conditions, the exercise of ESMA's power addresses a significant investor protection concern in the Union. ESMA can exercise its power for renewable temporary periods of up to three months.

ESMA issued a statement in December 2017, which announced that supervisory convergence work and measures imposed by national regulators in this area had not been enough to control or reduce investor protection concerns. This was followed by a call for evidence in January 2018 on the possible use of its product intervention powers.

ESMA has considered the responses to the call for evidence, which closed on February 5, 2018, and is proceeding with a complete ban in relation to binary options. ESMA is of the view that any restrictions other than a prohibition would be insufficient to address the significant investor protection concerns that arise from inherent features in these products, such as the very short duration of binary options contracts and their pricing structure.

ESMA is also proceeding with restrictions on the marketing, distribution and sale of CFDs. The restrictions consist of leverage limits on opening positions, a margin close-out rule that is applicable on a per account basis, a negative balance protection on a per account basis, preventing the use of incentives by a CFD provider, and a firm-specific risk warning delivered in a standardized way.

CFDs that will be subject to the restrictions are any derivative other than an option, future, swap or forward rate agreement, the purpose of which is to give the holder a long or short exposure to fluctuations in the price, level or value of an underlying, irrespective of whether they are traded on a trading venue. The restriction only applies to cash-settled CFDs (or those which may be settled in cash at the option of one of the parties other than by reason of default or other termination event). ESMA has confirmed that warrants and turbo certificates are not in scope, despite their similarities with CFDs. Conversely, securitized derivatives that are CFDs would be in scope were any to be issued (ESMA is not currently aware of any). As regards CFDs with cryptocurrencies as an underlying, ESMA has agreed on a 2:1 leverage limit on the opening of such a CFD. However, due to the specific characteristics of cryptocurrencies as an asset class, the market for financial instruments providing exposure to cryptocurrencies—such as CFDs—will be closely monitored and ESMA will assess whether stricter measures are required.

ESMA plans to translate the product intervention measures into the official languages of the EU, following which it will publish an official notice on its website. The measures will then be published in the Official Journal of the EU.

The prohibition on the marketing, distribution and sale of binary options will take effect after publication in the Official Journal. The restrictions on the marketing, distribution and sale of CFDs will take effect two

months after their publication in the Official Journal. The measures will each have an initial duration of three months, after which the measures may be renewed.

The U.K. FCA has issued a statement welcoming the measures by ESMA and announcing that it expects to consult on whether to apply these measures on a permanent basis in the U.K. to firms offering CFDs and binary options to retail clients.

The ESMA announcement is available at: https://www.esma.europa.eu/sites/default/files/library/esma35-43-1000_additional_information_on_the_agreed_product_intervention_measures_relating_to_contracts_for_differences_and_binary_options.pdf, ESMA Q&A accompanying the announcement are available at: https://www.esma.europa.eu/sites/default/files/library/esma71-98-125_faq_esmas_product_intervention_measures.pdf, the FCA statement is available at: <https://www.fca.org.uk/news/statements/fca-statement-esma-temporary-product-intervention-retail-cfd-binary-options> and ESMA's call for evidence is available at: <http://finreg.shearman.com/european-securities-and-markets-authority-consider>.

Credit Ratings

EU Authority Seeks to Clarify the Third-Country Endorsement Regime for Credit Ratings

On March 27, 2018, ESMA opened a consultation on proposed supplementary guidance on the application of the endorsement regime under the EU Credit Rating Agencies Regulation. The CRA Regulation provides that banks, investment firms, insurers, reinsurers, management companies, investment companies, alternative investment fund managers and CCPs may only use credit ratings for certain regulatory purposes where such ratings have been issued by CRAs established in the EU and registered with ESMA. Credit ratings issued in a third country may only be used for such regulatory purposes in the EU under an endorsement regime or an equivalence/certification regime. Endorsement allows credit ratings issued by a third-country CRA and endorsed by an EU CRA to be used for regulatory purposes in the EU. The equivalence/certification regime allows credit ratings issued by a third-country CRA in relation to a third-country entity or financial instrument to be used in the EU for regulatory purposes—it does not cover ratings issued by a third-country CRA for an EU entity or a financial instrument issued in the EU. However, the equivalence regime requires an affirmative assessment by ESMA and the Commission as to the legal regime for credit ratings agency in the third country.

In November 2017, ESMA published an updated version of the Guidelines on the endorsement regime, which clarified that ESMA expects an endorsing CRA to verify, and be able to demonstrate, that the third-country CRA has established internal requirements which are at least as stringent as the corresponding requirements in the relevant provisions of the CRA Regulation, or that the third-country CRA fulfills the endorsement requirements under the CRA Regulation.

ESMA is proposing to supplement the Guidelines, following feedback from CRAs engaged in endorsing credit ratings. The CRAs suggested that further guidance is needed to help them assess whether the internal requirements of a third-country CRA can be considered as stringent as those in the CRA Regulation. The proposed ancillary guidance aims to clarify the general principle for assessing whether a requirement is “as stringent as” and provides an assessment of concrete cases, submitted by CRAs, of diverging policies within and outside the EU.

Responses to the consultation can be provided until May 25, 2018. ESMA intends to publish a consolidated version of the Guidelines in Q3 2018.

As with the existing Guidelines, the additional guidance will apply to credit ratings issued on or after January 1, 2019, and to existing credit ratings reviewed after that date.

The consultation paper and response form are available at: <https://www.esma.europa.eu/press-news/consultations/consultation-draft-guidelines-%E2%80%9Cstringent-as%E2%80%9D-notion-in-cra-regulation> and the existing Guidelines are available at: <http://finreg.shearman.com/eu-authority-acts-on-new-third-country-endorsemen>.

Derivatives

Final EU Guidelines for Position Calculation by Trade Repositories

On March 27, 2018, ESMA published finalized Guidelines on position calculation by trade repositories under the European Market Infrastructure Regulation. ESMA consulted on a draft version of the Guidelines at the end of 2017.

EMIR requires that derivatives contracts are reported to a trade repository by the parties to the contract or by the CCP. Reporting parties do not have to report their trades to the same trade repositories. Instead, trade repositories must take steps to reconcile records among one another. Trade repositories are required to calculate the positions by class of derivatives and the reporting entity, based on the reports received. Trade repositories are also required to publish aggregate positions by class of derivatives.

ESMA has introduced new Guidelines to provide a framework for trade repositories to provide the relevant calculations in a common format and follow a consistent methodology and timeline. This will promote the provision to relevant authorities with more consistent and harmonized position data in relation to derivatives and higher standards as regards the data that is made available to authorities.

The final Guidelines include high-level principles and specific procedures for trade repositories to follow and require trade repositories to make available position data in four separate reports—a Position Set, Currency Position Set, Collateral Set and Collateral Currency Position Set.

The Guidelines will apply to EU trade repositories registered by ESMA or third-country trade repositories recognized by ESMA from December 3, 2018. There will be an annual assessment of trade repositories' compliance. ESMA has so far registered eight EU trade repositories but has not yet recognized any third-country trade repositories.

The Guidelines are available at: https://www.esma.europa.eu/sites/default/files/library/esma70-151-1272_guidelines_on_position_calculation_by_trade_repositories_under_emir_final_report.pdf and ESMA's list of registered trade repositories is available at: <https://www.esma.europa.eu/supervision/trade-repositories/list-registered-trade-repositories>.

Financial Market Infrastructure

Consultation on Proposed EU Technical Standards for Securitization Repositories

On March 23, 2018, ESMA published two consultation papers relating to the regulation of EU securitization repositories under the Securitization Regulation (also known as the STS Regulation). The first consultation paper proposes draft technical standards on applications for registration of a securitization repository and draft Guidelines on data portability between securitization repositories. The second consultation paper consults on draft advice to the European Commission on supervisory fees payable by securitization repositories.

The Securitization Regulation requires, among other things, securitization special purpose entities, originators and sponsors of a securitization to make certain information available via a securitization repository to holders of a securitization position, to national regulators and, upon request, to potential investors. ESMA will register and supervise securitization repositories, as it does trade repositories under EMIR and the Securities Financing Transactions Regulation. Unlike EMIR and SFTR, the Securitization Regulation does not contemplate non-EU firms as securitization repositories.

The first consultation paper sets out draft Regulatory Technical Standards on the contents of the application for registration by firms wishing to provide repository services and draft Implementing Technical Standards on the format for the registration application. In addition to information on the scope of services (securitization types, risk transfer methods and underlying exposure types) that a securitization repository aims to provide, ESMA is proposing that a candidate securitization repository should provide information on arrangements for dealing for conflicts of interest, financial information, information about the management body, operational arrangements and data protection procedures. The Securitization Regulation recognizes that firms wishing to provide securitization services may already be registered with ESMA under EMIR or SFTR and allows those trade repositories to apply for an extension of registration instead of making a full application. ESMA's draft RTS includes a list of information that does not need to be provided in an extension application, provided that the information that ESMA holds is up to date.

Furthermore, the first consultation paper includes proposed Guidelines on the transfer of data between securitization repositories. These are intended to apply if a securitization repository ceases to provide securitization services and are similar to ESMA's 2017 data transfer Guidelines for trade repositories.

The second consultation paper responds to a request from the European Commission for advice to assist the Commission in preparing a regulation on supervisory fees for securitization repositories. Under the Securitization Regulation, ESMA is able to charge fees for expenses relating to registration and ongoing supervision of securitization repositories. The Commission must prepare draft legislation providing for the types of fees, the matters for which fees are due, the amount of the fees and the manner in which fees should be paid. ESMA's advice considers the existing fee arrangements under SFTR and EMIR and proposes a single registration fee differentiated between new applications and extension applications and an annual supervisory fee based on a repository's turnover.

Responses to both consultations can be provided until May 23, 2018. ESMA intends to publish the final draft RTS and ITS in Q3/Q4 2018 and to submit the final advice to the European Commission in Q3 2014. The Securitization Regulation will apply directly across the EU from January 1, 2019 to securities issued under securitizations on or after January 1, 2019.

The consultation paper on technical standards is available at: <https://www.esma.europa.eu/press-news/consultations/consultation-draft-rts-application-registration-securitisation-repository>, the consultation paper on technical advice is available at: <https://www.esma.europa.eu/press-news/consultations/consultation-technical-advice-fees-securitisation-repositories> and the Securitization Regulation is available at: <http://finreg.shearman.com/new-eu-securitization-framework-published>.

MiFID II

Final Draft EU Technical Standards Amending Systematic Internalisers' Quote Rules

On March 26, 2018, ESMA published a final report and final draft amending RTS to amend the RTS on the equity transparency obligations of trading venues and investment firms (Commission Delegated Regulation (EU) 2017/587, known as RTS 1). The Markets for Financial Instruments Regulation 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 considers that this concept needs to be further elaborated and consulted on proposed amendments last year. ESMA has not made any changes to its proposal. The final draft amending RTS provide that 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 also consulted on other amendments to RTS 1 to correct changes that were made to the original RTS when it was published in the Official Journal of the European Union. ESMA believes the corrections are needed to avoid inconsistent application of the requirements. There have been no further changes to those previously proposed amendments.

RTS 1 has been directly applicable across the EU since January 3, 2018. ESMA has submitted the final report to the European Commission for consideration. The final amendments will only enter into force once the amending RTS are published in the Official Journal of the European Union.

ESMA's final report is available at: <https://www.esma.europa.eu/press-news/esma-news/esma-clarifies-mifir-quoting-obligations-systematic-internalisers> and RTS 1 is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R0587>.

Payment Services

US Board of Governors of the Federal Reserve System Commission Study Regarding Payments Fraud and Security Vulnerabilities

On March 29, 2018, the U.S. Board of Governors of the Federal Reserve System announced that it is undertaking a study that will begin this month with respect to fraud in the U.S. payments system. The study will identify causes and contributing factors to fraud in the U.S. payments system, such as payment security vulnerabilities, and will measure the costs associated with such fraud. The study was commissioned as part of the Federal Reserve Board's Next Steps in the Payment Improvement Journey paper that was released last year. A global management consulting firm will conduct the study, which is expected to last up to six months. The study is intended to provide data to assist the Federal Reserve with its collaboration with the payments system industry with respect to the security of the payments system.

The full text of the Federal Reserve Board announcement is available at: <https://www.federalreserve.gov/newsevents/pressreleases/other20180329a.htm>.

European Commission Proposes Extending Fee Cap to Non-Eurozone Member States

On March 28, 2018, the European Commission published a proposed Regulation to amend the Regulation on cross-border payments in the EU. The Regulation on cross-border payments provides, among other things, that charges for cross-border euro payments within the Eurozone must be the same as charges for domestic euro payments. Member States outside of the Eurozone were given the option to extend the application of the Regulation to their domestic currency. Only Sweden opted to do so.

The proposed amending Regulation extends the scope of the fee cap provisions to EU Member States outside of the Eurozone for euro-denominated payments. A payment service provider's charges for cross-

border euro payments will be required to be the same as that charged by the PSP for a domestic payment of the same value in the official currency of the customer's Member State. Cross-border transactions in currencies other than the euro are outside of the scope of the fee cap proposals. The proposals aim to put an end to the high cost of intra-EU cross-border transactions in euro.

In addition, the Commission is proposing to impose disclosure obligations on PSPs that go beyond those already imposed by the new Payment Services Directive. PSPs will be required to disclose to their customers the full cost of their currency conversion services, and where applicable, those of alternative currency conversion services, before a payment transaction. This proposal is intended to provide consumers with the ability to compare currency conversion service options and costs. PSPs will need to disclose the exchange rate, the foreign exchange reference rate and the total cost that would apply to a transaction. The EBA is charged with further specifying these disclosure requirements through RTS. Those RTS will also set a transitional cap for all currency conversion charges which will apply for a transitional period between the entry into force of the RTS and the applicable date of the proposed amendments. The proposed disclosure requirements would apply to all cross-border payments, including payments in currencies other than the euro.

Feedback on the Commission's proposals can be provided via the consultation webpage by May 24, 2018. The proposed amending Regulation has now passed to the European Parliament and Council of the European Union for consideration. The Commission anticipates that the final amending Regulation would apply from January 1, 2019.

The proposed amending Regulation, impact assessment and feedback form are available at: https://ec.europa.eu/info/law/better-regulation/initiatives/com-2018-163_en and the existing Regulation on cross-border payments is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1522312515756&uri=CELEX:02009R0924-20120331>.

European Banking Authority Proposes Extending the Scope of the Complaints-Handling Guidelines

On March 28, 2018, the European Banking Authority published proposals to extend the Joint Committee Guidelines on complaints-handling for the securities and banking sectors to the new institutions established under the revised Payment Service Directive and the Mortgage Credit Directive. The Joint Committee's Guidelines on complaints-handling for the securities and banking sectors, published in June 2014, apply to national regulators responsible for supervising complaints-handling by credit institutions, investment firms, certain fund managers, payment institutions and electronic money institutions where complaints are made by natural or legal persons about the regulated activities carried out by these entities.

The MCD, which has applied since March 2016, covers non-bank creditors. Similarly, PSD2, in application since January 2018, introduced two new providers of payment services—payment initiation service providers and account information service providers. Complaints-handling by these entities do not currently fall within the scope of the Guidelines.

The EBA is proposing to extend the scope of the existing Guidelines to these entities to ensure that consumers receive the same level of protection when they interact with these new entities as when they interact with in-scope regulated entities. The extended Guidelines would only apply to security-related complaints for account information services provided by account information service providers under PSD2. The EBA proposes that national regulators should apply the extended Guidelines on a proportionate basis, taking into account the nature, scale and complexity of the business of each entity as well as the nature and range of services they offer.

The consultation closes on May 27, 2018.

The consultation paper is available at:

<http://www.eba.europa.eu/documents/10180/2169743/Consultation+Paper+on+the+application+of+the+Joint+Committee+Guidelines+on+complaints-handling+to+the+new+institutions+under+MCD+and+PSD2+%28EBA-CP-2018-02%29.pdf> and the existing Guidelines are available at:

<https://www.eba.europa.eu/documents/10180/732334/JC+2014+43+-+Joint+Committee+-+Final+report+complaints-handling+guidelines.pdf/312b02a6-3346-4dff-a3c4-41c987484e75>.

Securities

Final EU Guidelines on Internalized Settlement Reporting Under the Central Securities Depositories Regulation

On March 28, 2018, ESMA published final Guidelines on Internalized Settlement Reporting under the Central Securities Depositories Regulation. The CSDR, which introduces common standards for settlements across the EU, will apply directly across the EU from January 1, 2023 to transferable securities issued after that date and, from January 1, 2025, to all transferable securities. The CSDR requires settlement internalizers to report the aggregated volume and value of all securities transactions that they settle outside of securities settlement systems to their national regulator on a quarterly basis. Settlement internalizers are firms that execute transfer orders on behalf of clients or on own account other than through a securities settlement system. National regulators must, without delay, transmit the information received from settlement internalizers to ESMA and inform ESMA of any resulting potential risk. RTS on internal settlement (Commission Delegated Regulation (EU) 2017/391) provide the content of internalized settlement reporting and ITS (Commission Implementing Regulation (EU) 2017/393) provide the templates and procedures for reporting and transmission of the information.

The Guidelines on Internalized Settlement Reporting aim to ensure the consistent application of the requirements under CSDR and the related technical standards. The Guidelines set out the scope of data to be reported to national regulators and the entities responsible for reporting the information. The Guidelines also provide the process for submission of information by national regulators to ESMA. The Guidelines will apply to national regulators and to settlement internalizers from the date that they are published on ESMA's website in the official languages of the EU.

The final Guidelines on reporting internalized settlement are available at: https://www.esma.europa.eu/press-news/esma-news/esma-finalises-guidelines-how-report-internalised-settlement?_sm_au_=iVVPjP5JfRPm2WtQ.

European Money Markets Institute Consults on Hybrid Methodology for Euribor

On March 26, 2018, the European Money Markets Institute published a consultation paper seeking respondents' views on a hybrid determination methodology for the Euro Interbank Offered Rate (Euribor). EMMI is the administrator for Euribor, a major euro interest reference rate for unsecured interbank short-term lending and borrowing. Euribor was classed as a critical benchmark of systemic importance for financial stability by the European Commission in 2016.

Euribor is currently determined using a survey approach entailing the collection of quotes from contributing panel banks active in the euro money markets, supplemented by expert judgement. In line with the Financial Stability Board's 2014 report, "Reforming Major Interest Rate Benchmarks," EMMI has been working towards a methodology which will strengthen Euribor by underpinning it, to the greatest extent possible, with real transaction data. In 2016, EMMI proposed a new determination methodology for Euribor that was fully

anchored in real transactions. However, viability testing of the proposed methodology revealed that a seamless transition from a quote-based to a fully transaction-based methodology was not feasible.

EMMI is now proposing a three-level “hybrid” methodology, under which the calculation of Euribor at particular defined tenors is supported by euro money market transaction data from contributing panel banks whenever available and relies on other related market pricing sources when necessary. Where these data are not available, Euribor will be calculated using contributing panel banks’ appreciation of their funding costs. Level 1 uses panel banks’ “Eligible Transactions.” EMMI is currently studying the introduction of a threshold on the number of Eligible Transactions a panel bank must have for a Level 1 submission to be possible. Level 2 involves the calculation of a panel bank’s submission, using a hierarchy of three available submission techniques, where a bank has insufficient Eligible Transactions to make a Level 1 submission. Level 3 applies where a panel bank’s submission at a given defined tenor cannot be made using either a Level 1 or Level 2 methodology. The bank should determine its Level 3 submission, by reference to permissible data sources, through the application of a combination of modelling techniques and/or the panel bank’s judgement. The changes have many parallels to the LIBOR reforms proposed by LIBOR’s administrator, ICE Benchmark Administration Ltd.

EMMI is also consulting on issues such as whether to discontinue the calculation and publication of three of the eight tenors it publishes due to low levels of activity underpinning the markets those tenors represent and on other aspects of the publication process that concern the market.

EMMI invites responses to the consultation by May 15, 2018 and also welcomes any additional views and considerations that are not covered in the consultation paper. EMMI intends to publish a summary of responses during June 2018.

The consultation paper is available at: https://www.emmi-benchmarks.eu/assets/files/D0083-2018%20Consultation%20Hybrid%20Euribor_full.pdf, the LIBOR Output Statement is available at: <http://ir.theice.com/press/press-releases/all-categories/2018/03-13-2018-150112718> and the latest ICE Benchmark Administration press release is available at: <http://ir.theice.com/press/press-releases/all-categories/2018/03-13-2018-150112718>.

People

John C. Williams Named President and CEO of the Federal Reserve Bank of New York

On April 3, 2018, the Federal Reserve Bank of New York announced that John C. Williams has been named its president and chief executive officer. Mr. Williams currently serves as the president and chief executive officer of the Federal Reserve Bank of San Francisco, a position he has held since 2011. Mr. Williams joined the Federal Reserve Bank of San Francisco in 2002, and prior to his appointment as president, served as executive vice president and director of research. Mr. Williams has also served as a senior economist at the White House Council of Economic Advisers. Mr. Williams will begin as president and chief executive officer on June 18, 2018, succeeding current president William C. Dudley, who is retiring.

The full text of the Federal Reserve Bank of New York announcement is available at:

<https://www.newyorkfed.org/newsevents/news/aboutthefed/2018/oa180403>.

Upcoming Events

April 18, 2018: ECB public hearing by telephone conference on proposed guide to internal models

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

April 25, 2018: EBA public hearing on draft EBA Guidelines on Management of Non-Performing and Forborne Exposures

May 31, 2018: Bank of England and Centre for Economic Policy Research conference on competition and regulation in financial markets

Upcoming Consultation Deadlines

April 9, 2018: PRA consultation on MREL reporting requirements

April 12, 2018: European Commission consultation on implementing the final aspects of Basel III into EU law

April 25, 2018: Financial Stability Board survey on legal barriers to OTC derivatives trade reporting

May 4, 2018: IOSCO consultation on conflicts of interest and associated conduct risks during the equity capital raising process

May 4, 2018: ECB consultation on draft guides to ICAAP and ILAAP

May 4, 2018: Basel Committee technical consultation on Pillar 3 disclosure requirements and the regulatory treatment of accounting provisions

May 6, 2018: IOSCO consultation on proposed recommendations for trading venues and their regulators when implementing, operating and monitoring volatility control mechanisms to preserve orderly trading

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

May 11, 2018: FCA survey of European Economic Area firms currently operating in the U.K. under a passport

May 15, 2018: EMMI consultation on a hybrid methodology for Euribor

May 16, 2018: European Commission proposed EU covered bonds legislative package

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

May 23, 2018: European Commission's legislative proposals to address NPL build-up in the EU

May 23, 2018: European Commission's proposed Regulation on the law applicable to the third-party effects of assignments of claims

May 23, 2018: ESMA consultations on draft technical standards on the application for registration of a securitization repository and on draft advice to the European Commission on supervisory fees for securitization repositories

May 24, 2018: European Commission proposed amending Regulation on cross-border payments in the EU

May 25, 2018: Basel Committee consultation on revisions to Pillar 3 Framework

May 25, 2018: ESMA consultation on supplementary guidance on the CRA endorsement regime

May 27, 2018: EBA consultation on extending the Joint Committee Guidelines on complaints-handling for the securities and banking sectors

May 28, 2018: ECB consultation on proposed guide to internal models

June 5, 2018: HM Treasury consultation on cash and digital payments in the new economy

June 8, 2018: PSR consultation on its review of PSR Directions made in 2015

June 8, 2018: EBA consultation on draft EBA Guidelines on Management of Non-Performing and Forborne Exposures

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

June 20, 2018: Basel Committee consultation on revisions to minimum capital requirements for market risk

June 21, 2018: FCA consultation on its approach to supervision

June 21, 2018: FCA consultation on its approach to enforcement

June 28, 2018: FCA consultation on revising the Financial Crime Guide to include insider dealing and market manipulation

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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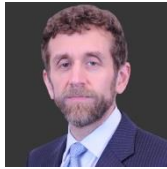
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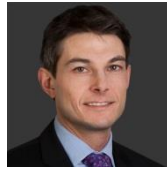
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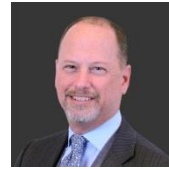
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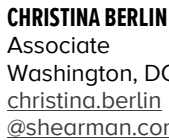
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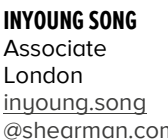
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