

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

EU's Fifth Money Laundering Directive to Enter into Force July 2018

On June 19, 2018, the Fifth Money Laundering Directive was published in the Official Journal of the European Union and will enter into force on July 9, 2018. Member States must transpose the directive into their national laws within 18 months of that date. 5MLD makes a number of changes to the European Anti-Money Laundering and Counter-Terrorist Financing regime set out in the Fourth Money Laundering Directive.

The key changes introduced by 5MLD are:

- I. Extending the scope of "obliged entities" to include providers of exchange services between virtual and fiat currencies as well as custodian wallet providers. These entities will need to register in their home Member State.
- II. Harmonizing the application of enhanced customer due diligence for third countries that are determined by the European Commission to be high risk countries. Member States will be able to apply additional measures, where appropriate.
- III. Reducing the thresholds under which obliged entities are exempt from applying certain CDD measures to prepaid cards. The customer in a remote payment transaction exceeding EUR 50 will need to be identified. In addition, the use of anonymous prepaid cards issued outside the EU will only be permitted where the cards comply with requirements equivalent to EU laws.
- IV. Enhancing the powers of and cooperation between Financial Intelligence Units, including giving them access to information and the ability to exchange it without impediments. This will include access to information on all types of virtual currencies, not only those that are serviced by providers of exchange services and custodian wallet providers.
- V. Requiring Member States to maintain lists of specific functions that qualify as prominent public functions to assist in the identification of politically exposed persons.
- VI. Enhancing access to information on beneficial ownership across the EU and improving transparency in the ownership of companies and trusts.

5MLD is drafted as a minimum-harmonizing directive, which means EU Member States can apply more stringent requirements if they consider it necessary.

The Directive (EU) 2018/843 is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L0843&from=EN>.

Bank Prudential Regulation & Regulatory Capital

European Banking Authority Updates Recommendations on Equivalence of Non-EU Confidentiality Regimes

On June 20, 2018, the European Banking Authority published an updated Final Report on recommendations on the equivalence of confidentiality regimes under the Capital Requirements Directive. The Final Report was originally published in April 2015.

The EBA has added three third-country national regulators to the current list of third-country national regulators whose confidentiality regimes can be regarded as equivalent with those in the EU, following an assessment of the professional secrecy and confidentiality frameworks under which they operate.

The new entries are:

- I. The Guernsey Financial Services Commission (the Bailiwick of Guernsey);
- II. The Superintendence of the Financial Services of the Central Bank of Uruguay (the Oriental Republic of Uruguay); and
- III. The Bank of Korea (the Republic of Korea).

The updated recommendations apply from June 21, 2018. The recommendations are intended to assist national regulators in the EU in their assessment of third-country equivalence with the aim of facilitating

cooperation with third-country supervisory authorities and their participation in supervisory colleges overseeing international banks.

The updated Final Report is available at:

<http://www.eba.europa.eu/documents/10180/2257858/Amended+Recommendation+on+equivalence+of+confidentiality+regimes+%28EBA-Rec-2018-01%29.pdf>.

European Central Bank Updates its Asset Quality Review Manual

On June 20, 2018, the European Central Bank published a revised version of its manual on the methodology for phase 2 of its Asset Quality Review, which forms part of the Comprehensive Assessment that the ECB and national regulators must make of relevant Eurozone banks under the EU Regulation on the Single Supervisory Mechanism. This revised version replaces the earlier version of the AQR manual published in 2014.

In Frequently Asked Questions published alongside the updated AQR manual, the ECB explains that the AQR manual has been updated to reflect the entry into force of the new accounting rules of International Financial Reporting Standard 9 on January 1, 2018. This has required some changes to the provisions of the AQR manual, in particular to incorporate new approaches to determining impairments and classifying financial instruments. The manual has also been updated to reflect their view that bank business models focused on investment services have become increasingly important for ECB Banking Supervision, in particular in the context of Brexit.

The AQR manual will be further updated if and when changes to the methodology in general, or to the calibration of specific methodological elements, are deemed necessary and material.

The updated AQR manual is available at:

<https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.assetqualityreviewmanual201806.en.pdf> and the FAQ are available at:

https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.assetqualityreviewmanual201806_QA.en.pdf.

European Banking Authority Consults on Use of Purchased Receivables Approach for Capital Requirements for Securitised Exposures

On June 19, 2018, the European Banking Authority launched a consultation on draft Regulatory Technical Standards on the conditions to allow institutions to calculate capital requirements, including on expected loss, arising from securitized exposures (known as KIRB) in accordance with the purchased receivables approach under the Capital Requirements Regulation.

As part of the new EU Securitization framework that will apply from January 1, 2019, an Amending Regulation makes amendments to the CRR to revise the capital requirements for securitizations.

The current securitization framework provides that a specific supervisory permission is needed for institutions other than originators to use the Internal Ratings Based approach to securitization capital. The Amending Regulation removes that specific approval and makes use of the Securitisation IRB Approach (known as the SEC-IRBA) conditional only on the IRB permissions of the credit risk framework and on the availability of sufficient information to compute KIRB. Under the CRR, as amended by the Amending Regulation, institutions that are permitted to apply to calculate their regulatory capital requirements for securitization positions may use provisions that normally apply to purchased receivables under the IRB framework for credit risk. Using the purchased receivables provisions, institutions can calculate KIRB and corresponding risk factors (probability of default and loss given default) and use the results as input into the SEC-IRBA. The Amending

Regulation also permits the use of "proxy data" where sufficient, accurate or reliable data on the securitized exposures is not available for the calculation of KIRB.

The draft RTS set out details of the conditions under which institutions may use the provisions on purchased receivables in the context of securitization transactions. The RTS cover: (i) the general approach to the relationship between the IRB rules on purchased receivables and the SEC-IRBA framework; (ii) eligibility conditions to compute KIRB; (iii) IRB permissions and prior experience; (iv) eligibility to use the retail risk quantification standards; and (v) the use of proxy data.

The EBA intends to hold a public hearing on the proposals on September 4, 2018. Comments on the consultation are invited by September 19, 2018. The RTS will then be finalized and submitted to the European Commission for adoption.

The consultation paper is available at:

<http://www.eba.europa.eu/documents/10180/2256128/Consultation+Paper+on+RTS+on+the+calculation+of+KIRB+in+accordance+with+the+purchased+receivables+approach+%28EBA-CP-2018-10%29.pdf>, the online response form is available at: <http://bit.ly/2K0pVn5> and the registration page for the public hearing is available at: https://www.eba.europa.eu/news-press/calendar?p_p_id=8&_8_struts_action=%2Fcalendar%2Fview_event&_8_eventId=2256144.

Brexit for Financial Services

European Banking Authority Issues Annual Report for 2017

On June 18, 2018, the European Banking Authority published its Annual Report for 2017.

The Annual Report summarizes the progress made in a number of workstreams undertaken by the EBA in 2017, including the EBA's work on: (i) developing and maintaining an EU Single Rulebook for banking; (ii) promoting supervisory convergence; (iii) developing resolution policies and promoting common approaches for the resolution of failing financial institutions; (iv) determining and monitoring key risks in the banking sector across Europe; (v) strengthening the EBA's role as EU data hub for the collection, use and dissemination of banking data; (vi) protecting consumers, monitoring financial innovation and contributing to easy retail payments in the EU; (vii) Brexit preparations; (viii) international engagement; and (ix) cross-sectoral work by the European Supervisory Authorities under the Joint Committee.

The Annual Report also outlines the EBA's key areas of focus for the year ahead. These are:

- I. credit risk modelling;
- II. preparation for the full implementation of Basel III;
- III. further work on reducing the number of non-performing loans;
- IV. 2018 EU-wide stress test;
- V. 2018 EU-wide transparency exercise;
- VI. further work on the Pillar 2 roadmap and emerging risks;
- VII. third country equivalence;
- VIII. establishing the EBA's online training platform;
- IX. the European Centralised Infrastructure for Supervisory Data;

- X. preparation of a FinTech roadmap, to include a report on the impact of FinTech on business models and assessment of the risks and opportunities of FinTech for institutions;
- XI. implementation of new rules on payment services;
- XII. enhancing supervisory convergence to protect consumers; and
- XIII. engaging with resolution authorities.

The Annual Report is available at:

<http://www.eba.europa.eu/documents/10180/2255336/2017+EBA+Annual+Report.pdf>.

Conduct & Culture

Federal Reserve Bank of New York President John C. Williams Discusses Banking Culture Reform

On June 18, 2018, the Federal Reserve Bank of New York's new President, John C. Williams, discussed banking cultural reform at the FRBNY's annual Governance and Culture Reform Conference. His speech kicked off a full day of panels discussing various aspects of bank culture reform. President Williams noted that while the economy and regulation of the financial system have improved markedly since the financial crisis, more work needs to be done with respect to promoting good bank culture. President Williams highlighted that bank culture is often overlooked, especially in prosperous times when hard numbers, such as profits, losses, capital and liquidity, often look very positive. With respect to reform, President Williams suggested that effectuating change in bank culture is a multi-year process, and that maintaining good bank culture is an ongoing exercise that requires clearly defined expectations and values, a board and management who are committed to maintaining and promoting high standards of conduct and culture and an environment that empowers employees to speak up when they have concerns.

The full text of President Williams's remarks is available at:

<https://www.newyorkfed.org/newsevents/speeches/2018/wil180618>.

Corporate Governance

European Banking Authority Proposes Updated Guidelines on Outsourcing by Financial Institutions

On June 22, 2018, the European Banking Authority launched a consultation on draft Guidelines on outsourcing arrangements. The proposed Guidelines are intended to update and replace the outsourcing guidelines issued in 2006 (by the EBA's predecessor, the Committee of European Banking Supervisors) that applied to outsourcing by credit institutions. The proposed Guidelines will have a wider scope, applying to all financial institutions that are within the scope of the EBA's mandate, namely credit institutions and investment firms subject to the Capital Requirements Directive, payment institutions and electronic money institutions. The proposed Guidelines also integrate the recommendation on outsourcing to cloud service providers that was published by the EBA in December 2017.

The proposed Guidelines set out a definition of outsourcing in line with delegated legislation under the revised Markets in Financial Instruments Directive. They cover: (i) proportionality and group application; (ii) the nature of outsourcing arrangements; (iii) the applicable governance framework; (iv) the outsourcing process; and (v) guidelines on outsourcing addressed to competent authorities. A separate Annex provides an illustrative template that could be used for complying with the requirement in the proposed Guidelines to maintain a register of all outsourcing arrangements at institution and group level where applicable.

The proposed Guidelines should be read in conjunction with the EBA guidelines on internal governance, the EBA guidelines on common procedures and methodologies for the supervisory review and evaluation

process and the EBA guidelines on ICT risk assessment under the Supervisory Review and Evaluation Process. For payment institutions, the proposed Guidelines should be read in conjunction with the EBA guidelines on the information to be provided for the authorization of payment institutions under the revised Payment Services Directive, the EBA guidelines on security measures for operational and security risks under PSD2 and the EBA guidelines on major incident reporting under PSD2.

The EBA will hold a public hearing on the proposed Guidelines on September 4, 2018. Comments on the consultation are invited by September 24, 2018. The EBA will then finalize the draft Guidelines and the CEBS guidelines will be repealed once the new Guidelines take effect.

The consultation paper is available at:

<http://www.eba.europa.eu/documents/10180/2260326/Consultation+Paper+on+draft+Guidelines+on+outsourcing+arrangements+%28EBA-CP-2018-11%29.pdf>, the Annex is available at:

<http://www.eba.europa.eu/regulation-and-policy/internal-governance/guidelines-on-outsourcing-arrangements>, the online response form is available at: <http://bit.ly/2McnwGu>, the registration page for the public hearing is available at: <https://www.eba.europa.eu/meeting-registration/public-meetings/2018/public-hearing-on-a-cp-on-gl-on-outsourcing> and the Recommendation on outsourcing to cloud service providers is available at:

<https://www.eba.europa.eu/documents/10180/2170121/Final+draft+Recommendations+on+Cloud+Outsourcing+%28EBA-Rec-2017-03%29.pdf>.

Derivatives

European Securities and Markets Authority Issues Opinion on CCP Liquidity Risk Assessment

On June 22, 2018, the European Securities and Markets Authority published an Opinion on the liquidity risk assessment that a CCP must undertake under the European Market Infrastructure Regulation. The Opinion is addressed to national regulators that supervise CCPs.

EMIR requires a CCP to measure its potential liquidity needs on a daily basis and to ensure that it has access at all times to adequate liquidity to perform its services and activities. A CCP must, therefore, ensure it has access to credit lines or other arrangements with liquidity providers in case the financial resources at its disposal are not immediately available. In measuring its liquidity needs, a CCP is required to take into account the liquidity risk generated by the default of at least the two clearing members to which it has its largest exposures (the liquidity risk "Cover-2" test). EMIR and related delegated legislation provide detail on how a CCP should assess the liquidity risk arising from each of its relationships with its clearing members and its liquidity providers.

The purpose of the Opinion is to clarify how CCPs should assess the liquidity risk when a clearing member also acts as a liquidity provider and the liquidity risk when a liquidity provider is not also a clearing member. A CCP must assess the risks of any entities that might pose a material liquidity risk to the CCP. This includes any entity (e.g. a clearing member) acting in multiple different capacities which could pose a liquidity exposure to the CCP and would include clearing members acting in any of the following capacities: settlement banks, payment systems, securities settlement systems, nostro agents, custodian banks, liquidity providers, interoperable CCPs or service providers.

ESMA considers that a CCP should stress test the failure of its clearing members in all their capacities (whether they are liquidity providers or not). When performing its "Cover-2" stress tests, a CCP should test the default of every pair of clearing members acting in all their different capacities vis-à-vis the CCP and select the pair that corresponds to the largest exposure.

The Opinion also provides illustrations of some stress test scenarios that could be considered relevant for a CCP to comply with the EMIR requirements for the stress testing of a CCP's liquid financial resources.

The Opinion is available at: https://www.esma.europa.eu/sites/default/files/library/esma70-151-1149_opinion_on_ccp_liquidity_risk_assessment.pdf.

Financial Market Infrastructure

Bank of England Finalizes Fee-Levying Regime for Financial Market Infrastructures

On June 19, 2018, the Bank of England published a Policy Statement outlining the fees it intends to levy on Financial Market Infrastructures, namely CCPs, central securities depositories, recognised payment systems and specified service providers to recognised payment systems.

The BoE is empowered under the Banking Act 2009 to levy fees on FMIs but has not so far exercised its power to do so. The BoE has instead funded its supervision of FMIs through the Cash Ratio Deposit scheme. The Policy Statement follows a recommendation in February 2017 from the BoE's independent evaluation office that the BoE review its approach to funding FMI supervision and consider whether levying fees on supervised FMIs would be appropriate. The BoE consulted in August 2017 on proposals to introduce a new funding structure for FMI supervision. A further joint consultation was launched by the BoE and HM Treasury in March 2018 on the detail of the proposed fee-levying regime and the proposed fees for the 2018/19 fee year. The rationale for introducing an FMI fee-levying regime is to allocate the costs of FMI supervision to those entities that directly benefit from the BoE's supervision.

The new fee-levying regime will replace the funding of FMI supervision from the CRD. The BoE does not propose to publish a list of FMIs and the categories into which they fall for the purposes of the fee levy. Instead, it will inform each FMI of its own categorization.

The BoE must obtain approval from HM Treasury of the scale of fees the BoE can levy in respect to the supervision of recognised payment systems and specified service providers. A statutory instrument providing such approval was laid before Parliament on June 19, 2018 and will come into force on July 10, 2018, which is the date the fee-levying regime takes effect.

Fees for 2018/19 will be charged pro-rata for the fee year. The full annual process of levying fees will commence from fee year 2019/20.

The Policy Statement is available at: <https://www.bankofengland.co.uk/-/media/boe/files/paper/2018/fees-regime-for-the-supervision-of-financial-market-infrastructure-fmi.pdf>, the Banking Act 2009 (Fees) Regulations 2018 (S.I. 2018/734) are available at: http://www.legislation.gov.uk/uksi/2018/734/pdfs/uksi_20180734_en.pdf and the explanatory memorandum is available at: http://www.legislation.gov.uk/uksi/2018/734/pdfs/uksiem_20180734_en.pdf.

MiFID II

European Commission Clarifies Ancillary Activity Exemption Under MiFID II

On June 22, 2018, the European Commission published a letter, dated May 31, 2018, from the President of the European Commission, Valdis Dombrovskis, to Steven Maijoor, Chair of the European Securities and Markets Authority, following ESMA's request in April for clarification on how to interpret the ancillary activity exemption under the revised Markets in Financial Instruments Directive.

MiFID II exempts non-financial entities that deal on own account, or provide investment services to clients, in commodity derivatives from having to obtain authorization as an investment firm under MiFID II provided that, among other things, this activity is ancillary to their main business. The wording of both MiFID II and related Regulatory Technical Standards suggests that the tests for whether an activity is ancillary to the main business should be carried out at the level of the entity's group. However, ESMA stated in its letter to the Commission that some drafting amendments that were introduced by the Commission have led to uncertainty as to whether the tests should be carried out at the level of the entity rather than at group level.

The Commission has confirmed that MiFID II requires that the ancillary activities test needs to be calculated by each entity within a group that engages in either of the two relevant MiFID activities for which the exemption is available. In consequence, the ancillary activities test must be calculated as many times as necessary for each separate entity which trades in commodity derivatives within a group.

The letter to ESMA is available at:

https://www.esma.europa.eu/sites/default/files/library/letter_from_commission_vp_dombrovskis_answer_to_esma_letter_esma70-154-5851.pdf and the ESMA's request for clarification is available at:

<https://finreg.shearman.com/european-securities-and-markets-authority-seeks-c>.

European Securities and Markets Authority and UK Financial Conduct Authority End Concessionary Period for Legal Entity Identifier Requirements

On June 20, 2018, the European Securities and Markets Authority published a statement on the requirements under the Markets in Financial Instruments Regulation for a Legal Entity Identifier. In response to concerns that institutions would not all be able to obtain LEI codes in time for MiFIR's effective date, January 3, 2018, ESMA had issued a statement in December 2017 providing temporary concessions for a period of six months. Those temporary concessions permitted investment firms to provide a service triggering the obligation to submit a transaction report to a client from which they had not obtained an LEI code, provided that, before providing the service, they obtain the necessary documentation from the client to apply for an LEI code on the client's behalf. Trading venues were also permitted to report their own LEI codes instead of LEI codes of non-EU issuers while reaching out to those non-EU issuers.

ESMA and national regulators have closely monitored the use of LEIs since the publication of ESMA's December 2017 statement and note a significant increase in the LEI coverage for both issuers and clients. ESMA and national regulators have concluded that there is no need for the six-month period to be extended and it will therefore expire on July 2, 2018.

During the six-month period, national regulators were required to amend temporarily a validation rule in their transaction reporting systems. ESMA has confirmed that this amendment will be reversed for transactions executed after the six-month period. In response to ESMA's statement, the U.K. Financial Conduct Authority has separately confirmed that it will be implementing the LEI validation rule change from July 3, 2018.

To achieve supervisory convergence and the full application of MiFIR, ESMA and national regulators are now engaged in the development of an appropriate and proportionate common supervisory action plan which focuses on compliance with the LEI reporting requirements under MiFIR.

The ESMA statement is available at: https://www.esma.europa.eu/sites/default/files/library/esma70-145-872_public_statement_on_lei.pdf and the FCA LEI update is available at: <https://www.fca.org.uk/markets/mifid-ii/legal-entity-identifier-lei-update>.

Payment Services

UK Conduct Regulator Issues Statement on PSD2 Strong Customer Authentication and Common and Secure Communication Provisions

On June 22, 2018, following the publication by the European Banking Authority of an Opinion and draft Guidelines on Regulatory Technical Standards under the revised Payment Services Directive for strong customer authentication and common and secure communication, the U.K. Financial Conduct Authority published a statement on its website. The RTS under PSD2 set out how third-party providers of account information and payment initiation services (TPPs) and account servicing payment service providers (ASPSPs) should interact and communicate securely to enable TPPs to provide their services to customers with the customer's consent. The Opinion relates to the implementation of the RTS and the draft Guidelines relate to the availability of an exemption for ASPSPs from a requirement to build a contingency access mechanism.

The FCA welcomes the EBA's Opinion and draft Guidelines and confirms that, assuming the Guidelines remain as drafted, it expects to comply with them. The FCA will be consulting in Summer 2018 on proposed changes to its rules and guidance to reflect the RTS, the Opinion and the draft Guidelines. The consultation will outline the proposed process and level of information that the FCA will require from firms to make an exemption assessment. The FCA raises a number of issues that ASPSPs and TPPs should be considering, along with some key points from the Opinion and draft Guidelines of which they should take note in advance of the consultation.

The FCA expects to be able to make exemption assessments from early 2019. The RTS will apply from September 14, 2019 and therefore the FCA will aim to respond to firms' exemption requests promptly.

The FCA Statement is available at: <https://www.fca.org.uk/news/statements/eba-draft-psd2-guidelines-opinion-banks-others-involved-open-banking> and details of the EBA Opinion and draft Guidelines are available at: <https://finreg.shearman.com/european-banking-authority-clarifies-strong-custo>.

Recovery & Resolution

Financial Stability Board Finalizes Guidance to Support G-SIB Resolution Planning

On June 21, 2018, following consultation on draft guidance in November 2017, the Financial Stability Board published two finalized guidance papers on aspects of the recovery and resolution of global systemically important banks.

The first guidance paper sets out Principles on Bail-in Execution. The Principles are designed to assist resolution authorities developing bail-in resolution strategies and making resolution plans for G-SIBs operational. The Principles cover six aspects of bail-in execution: (i) bail-in scope; (ii) valuation; (iii) exchange mechanic; (iv) securities law and securities exchange requirements; (v) governance and (vi) communications.

The second guidance paper, entitled "Funding Strategy Elements of an Implementable Resolution Plan," provides additional guidance for national regulators and resolution authorities on the development of an implementable resolution funding plan. This additional guidance supplements existing guidance on liquidity risk management and resolution planning.

The Principles on Bail-In Execution are available at: <http://www.fsb.org/wp-content/uploads/P210618-1.pdf>, the Funding Strategy Elements of an Implementable Resolution Plan are available at: <http://www.fsb.org/wp-content/uploads/P210618-3.pdf>, the FSB press release is available at: <http://www.fsb.org/2018/06/fsb-publishes-guidance-on-bail-in-execution-and-resolution-funding-to-promote-g-sib-resolvability/> and details of

the November 2017 consultation are available at: <https://finreg.shearman.com/financial-stability-board-proposes-guidance-to-su>.

US Board of Governors of the Federal Reserve System Announces Stress Test Results

On June 21, 2018, the U.S. Board of Governors of the Federal Reserve System announced the results of the eighth and latest round of Dodd-Frank Act stress testing. Of the 35 bank holding companies that participated in this round of DFAST, which represent approximately 80% of the assets of all banks operating in the U.S., six were U.S. intermediate holding companies of non-U.S. financial institutions. Consistent with prior testing, this round of DFAST included both adverse and severely adverse scenarios. The severely adverse scenario simulated a severe global recession with U.S. unemployment rising by almost six percentage points to 10% along with a steepening Treasury yield curve. Federal Reserve Board Vice Chairman for Supervision Randal Quarles noted that under the severely adverse scenario, the simulated capital levels of the financial institutions that participated in this round of DFAST after the scenario are higher than the actual capital levels of large financial institutions in the years leading up to the financial crisis. In addition, consistent with the recently passed Economic Growth, Regulatory Reform and Consumer Protection Act, which provides that bank holding companies with less than \$100 billion in total consolidated assets are no longer subject to DFAST or the Comprehensive Capital Analysis and Review process, the Federal Reserve Board announced that three financial institutions were not included in the most recent results and will not be subject to DFAST testing or the CCAR process in future cycles. The Federal Reserve Board will announce the results of the latest round of the CCAR process on June 28, 2018.

The full text of the 2018 DFAST Methodology and Results is available at: <https://www.federalreserve.gov/publications/files/2018-dfast-methodology-results-20180621.pdf>.

European Banking Authority Mediates Disagreement on Two Cross-Border Banking Groups' Resolution Plans

On June 18, 2018, the European Banking Authority has published a redacted Decision on the disagreement between the Single Resolution Board and the National Bank of Romania, in their capacity as national resolution authorities under the EU Bank Recovery & Resolution Directive and the Single Resolution Mechanism Regulation. The Decision is the first that the EBA has made in its role as mediator between two resolution authorities responsible for agreeing the resolution plan for a EU cross-border banking group. The SRB and NRB failed to reach agreement on the resolution plan for two different banking groups. The EBA's Decision relates to both cases as the underlying facts and situation were similar.

The EBA's Decision requires the SRB and NRB to include detailed resolvability assessments and a consideration of the impediments to resolvability within any resolution plan that is adopted by either or both of the parties. Both resolution authorities must report within one month of the Decision to the EBA on the steps that they have taken to comply with the Decision and must make subsequent reports on a quarterly basis until the adoption of a joint decision on a group resolution plan.

The EBA's Decision is available at: <http://www.eba.europa.eu/documents/10180/16082/EBA+decision+on+the+settlement+of+a+disagreement+between+the+SRB+and+the+NBR+-+EN.pdf>.

Securities

European Central Bank Consults on Assessing Potential Successors to the EONIA Benchmark

On June 21, 2018, the European Central Bank published a consultation on behalf of the Working Group on Euro Risk-Free Rates. The ECB provides the secretariat for this Working Group. The Working Group is tasked,

among other things, with identifying and recommending alternatives to Euro lending benchmark rates, namely EURIBOR and EONIA.

The administrator of EONIA announced in February 2018 that, due to prolonged structural change in the underlying interbank lending market that uses EONIA as a benchmark, EONIA's compliance with the EU Benchmarks Regulation by January 2020 "cannot be warranted" and that the ongoing review of EONIA would therefore be discontinued. The consultation invites comments on three euro risk-free rates that could potentially replace EONIA. These are:

- I. The euro short-term rate (ESTER), a new wholesale unsecured overnight bank borrowing rate that the ECB proposes to launch before 2020;
- II. GC Pooling Deferred, a one-day secured, centrally cleared, general collateral repo rate, which is produced by STOXX, a wholly-owned subsidiary of Deutsche Börse Group; and
- III. RepoFunds Rate, a one-day secured, centrally cleared, combined general and specific collateral repo rate, which is produced by NEX Data Services Limited, a wholly-owned subsidiary of NEX Group plc, soon to be acquired by CME Group.

Market participants are also encouraged to express their views on whether it would be beneficial for the Working Group to consider assessing potential fallback rates to the Euro risk-free rate.

Comments on the consultation are invited by July 13, 2018. Respondents are asked to submit their comments using a public comments template available on the consultation webpage.

Following the consultation, the ECB will prepare an anonymized summary of the consultation feedback, which will be discussed by the Working Group and published on the ECB's website with other documents related to the meeting of the Working Group scheduled for September 13, 2018.

The consultation paper is available at: http://www.ecb.europa.eu/paym/pdf/cons/euro_risk-free_rates/consultation_details_201806.en.pdf, the public comments template is available at: http://www.ecb.europa.eu/paym/cons/html/wg_assess_cand_euro_risk-free_rates.en.html, details of the Working Group are available at: <https://finreg.shearman.com/eu-authorities-appoint-industry-working-group-on-> and details of the discontinuation of the EONIA review are available at: <https://finreg.shearman.com/eonia-review-shelved>.

European Securities and Markets Authority Publishes Annual Report

On June 19, 2018, the European Securities and Markets Authority published its Annual Report, dated June 15, 2018. The report sets out ESMA's key achievements against its 2017 objectives of promoting supervisory convergence, assessing risks to investors, markets and financial stability, completing a single rulebook for the EU financial markets and directly supervising trade repositories, credit rating agencies and third-country CCPs. The report also discusses ESMA's contributions to the work of the Joint Committee of the European Supervisory Authorities.

The report does not consider the focus areas for ESMA in 2018, which are set out in ESMA's work programs. However, ESMA indicates that in 2018 it will be, among other things: (i) issuing further opinions on pre-transparency waivers under the Markets in Financial Instruments package; (ii) engaging with credit rating agencies and trade repositories on their strategy, governance, operational matters and preparations for Brexit; and (iii) continuing its work to finalize the technical standards and technical advice under the EU Prospectus Regulation.

The report is available at:

https://www.esma.europa.eu/sites/default/files/library/esma20-95-916_2017_annual_report.pdf.

People

Kathleen Kraninger Nominated to Serve as US CFPB Director

On June 20, 2018, U.S. President Donald Trump announced that he had nominated Kathleen Kraninger to serve as Director of the U.S. Bureau of Consumer Financial Protection. Ms. Kraninger is nominated to replace former CFPB Director Richard Cordray, who resigned in November of 2017. Mick Mulvaney currently serves as Acting Director of the CFPB.

The full White House press release is available at: <https://www.whitehouse.gov/presidential-actions/seven-nominations-sent-senate-today-3/>.

John C. Williams Becomes 11th President and CEO of the Federal Reserve Bank of New York

On June 18, 2018, John C. Williams became the 11th President and Chief Executive Officer of the Federal Reserve Bank of New York. President Williams replaces outgoing President William C. Dudley, whose last day as president was June 17, 2018. In a statement given on his first day in office, President Williams noted that his goals as President included openness and transparency, objectivity and independence of thought and a commitment to the diverse needs of constituents across the Federal Reserve Bank of New York's District.

President Williams's full statement is available at:
<https://www.newyorkfed.org/newsevents/statements/2018/0618-2018>.

Professor Julia Black and Jill May Appointed to the Prudential Regulation Committee

On June 18, 2018, HM Treasury announced the appointment, by the Chancellor, Philip Hammond, of two new external members of the Prudential Regulation Committee for a three-year term: Professor Julia Black and Jill May. In addition, Norval Bryson was re-appointed to the PRC for a further three-year term.

Upcoming Events

June 28, 2018: U.S. Senate Committee on Banking, Housing and Urban Affairs hearing: "Legislative Proposals to Examine Corporate Governance."

July 25, 2018: EBA public hearing on draft Guidelines on the conditions to be met to benefit from an exemption from contingency measures under the RTS on strong customer authentication and common and secure communication

September 4, 2018: EBA public hearing on its consultation on draft RTS for calculation of KIRB for securitized exposures

September 4, 2018: EBA public hearing on its consultation on draft Guidelines on outsourcing arrangements

September 4-5, 2018: OECD blockchain conference: Unleashing the potential and facing the challenges of blockchain (registration closes August 30, 2018)

October 15, 2018: SRB Conference 2018 - 10 years after the crisis: are banks now resolvable?

November 28, 2018: EBA 7th Annual Research Workshop - Reaping the benefits of an integrated EU banking market

Upcoming Consultation Deadlines

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

July 13, 2018: ECB consultation on potential replacements for the EONIA benchmark

July 4, 2018: FSB thematic peer review on bank resolution planning

July 5, 2018: FCA consultation on improving disclosure by AFMs to their investors (part of the Asset Management Market Study)

July 6, 2018: FSB consultation on proposed Recommendations for consistent national reporting of data on the use of compensation tools to address misconduct risk

July 9, 2018: FCA consultation on its approach to ex post impact evaluation

July 13, 2018: U.S. Federal Reserve Board, FDIC and OCC proposed amendments to regulatory capital rules to address changes to U.S. GAAP

July 17, 2018: EBA consultation on draft Guidelines on the exposures to be associated with high risk

July 18, 2018: BoE consultation on ISO 20022 migration for U.K. payment systems

July 20, 2018: EBA consultation on draft guidelines on STS criteria for ABCP securitization

July 20, 2018: EBA consultation on draft guidelines on STS criteria for non-ABCP securitization

July 24, 2018: European Commission proposal for a regulation on Sovereign Bond-Backed Securities

July 24, 2018: European Commission consultation on a proposed Regulation amending the Benchmarks Regulation.

July 25, 2018: European Commission consultation on a proposal for Regulation amending MAR and the PR to promote SME Growth Markets

July 27, 2018: EBA consultation on draft Guidelines on disclosure of non-performing and forborne exposures

August 13, 2018: EBA consultation on draft Guidelines on the conditions to be met to benefit from an exemption from contingency measures under the RTS on strong customer authentication and common and secure communication

August 20, 2018: FSB call for feedback on the technical implementation of the TLAC Standard

August 22, 2018: PRA consultation on Securitization: the new EU framework and significant risk transfer

September 3, 2018: PSR discussion paper on use of data in the payments industry

September 19, 2018: EBA consultation on draft RTS for calculation of KIRB for securitized exposures

September 24, 2018: EBA consultation on draft Guidelines on outsourcing arrangements

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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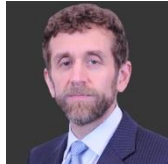
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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or a advice about specific situations if desired.

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