SHEARMAN & STERLING

FINANCIAL REGULATORY DEVELOPMENTS FOCUS

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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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IN THIS ISSUE

AML/CTF, Sanctions and Insider Trading

Draft EU Guidelines on Supervisory Cooperation on Anti-Money Laundering and Countering the Financing of Terrorism

On November 8, 2018, the Joint Committee of the European Supervisory Authorities launched a consultation on draft joint guidelines on the cooperation and information exchange between national regulators supervising banks and other financial institutions for compliance with Anti-Money Laundering and Countering the Financing of Terrorism rules. The Fourth Money Laundering Directive requires that EU member states allow, without undue restriction, the exchange of information and provision of assistance between national regulators. The ESA's proposed guidelines aim to set out how that can be achieved in practice. The ESAs are proposing that a college of supervisors should be established where a financial institution is supervised in three or more EU member states. The draft guidelines set out rules on the establishment and operation of the colleges. For firms that do not require a college but which operate in two member states, the ESAs propose a process for the bilateral exchange of information between national regulators.

The consultation closes on February 8, 2019.

The consultation paper is available at: http://www.eba.europa.eu/documents/10180/2440050/Consultation+Paper+on+JC+GLs+on+cooperation+and+information+exchange+for+AML+CFT+supervisory+purposes+.pdf.

Bank Prudential Regulation & Regulatory Capital

EU Legislation Published to Update Supervisory Reporting Requirements

A Commission Implementing Regulation supplementing the Capital Requirements Regulation has been published in the Official Journal of the European Union. The Implementing Regulation amends the existing Implementing Regulation ((EU) No 680/2014) to reflect the gradual supplementation and amendment of elements of the CRR reporting requirements by the adoption of further Regulatory Technical Standards. The Amending Regulation was adopted by the European Commission on October 9, 2018. It amends the existing Implementing Regulation to set out:

I. additional requirements relating to prudent valuation adjustments of fair-valued positions;

II. additional requirements to accommodate the reporting on securitization positions subject to the revised securitization framework; and

III. minor changes to the reporting requirements on the geographical distribution of exposures.

The Amending Regulation will enter into force on November 29, 2018 and will apply directly across the EU from December 1, 2018.

The Commission Implementing Regulation (EU) 2018/1627 is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1627&from=EN.

Brexit for Financial Services

Statement by EU Supervisory Authority Confirms No EU Transitional Measures for UK Credit Rating Agencies and Trade Repositories on a Hard Brexit

On November 9, 2018, the European Securities and Markets Authority issued a public statement urging customers of credit rating agencies and trade repositories to prepare for a "no deal" Brexit. The European Market Infrastructure Regulation requires derivatives subject to the reporting obligation to be reported to either a registered trade repository established in the EU or a recognized third-country trade repository. 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 if a rating is issued by: (i) an EU CRA registered with ESMA; or (ii) a third-country CRA under the endorsement regime or the equivalence/certification regime. Without the EU putting in place a temporary regime (as the U.K. is doing), U.K. CRAs and trade repositories will lose their EU registration when the U.K. leaves the EU on a "hard Brexit." ESMA reiterates that all market participants must ensure that they continue to comply with their obligations under EMIR, the CRA Regulation and other EU legislation and should monitor the Brexit-related public statements issued by CRAs and trade repositories.

ESMA's statement confirms that U.K. CRAs and trade repositories are implementing contingency plans in preparation for a "no deal" Brexit. However, further action is needed. ESMA is evaluating several applications submitted by both CRAs and trade repositories and states that it intends to start negotiations with the U.K. Financial Conduct Authority to ensure that the requisite arrangements for information exchange are in place by March 29, 2019.

In preparation for a "no deal" Brexit, the U.K. is establishing (i) a conversion regime for U.K. and third-country CRAs and trade repositories currently registered or certified by ESMA; and (ii) a temporary registration regime for newly established U.K. entities that are part of a group of CRAs or trade repositories with an existing ESMA registration before exit day.

The statement is available at: https://www.esma.europa.eu/press-news/esma-news/esma-asks-clients-credit-rating-agencies-and-trade-repositories-prepare-no-deal, details of the U.K.'s Brexit preparations for CRAs and trade repositories are available at: https://finreg.shearman.com/UK-Plans-Transitional-Regime-for-Credit-Ratings-f and https://finreg.shearman.com/draft-uk-post-brexit-legislation-to-onshore-trade and details of the FCA's statement on the U.K. preparations are available at: https://finreg.shearman.com/uk-regulator-provides-information-on-brexit-proce.

Proposed Exemption From the EU Clearing Obligation for OTC Derivatives Novated to EU Counterparties in Preparation for a 'No Deal' Brexit

On November 8, 2018, ESMA proposed the introduction of a 12-month exemption from the clearing obligation to facilitate the novation of uncleared OTC derivative contracts to EU counterparties in the event of a "no deal" Brexit. EMIR imposes a clearing obligation on EU firms that are counterparties to certain OTC derivatives contracts. The clearing obligation applies to Interest Rate Swaps denominated in seven currencies (EUR, GBP, JPY, USD, NOK, PLN and SEK) and to two classes of credit default swap indices (iTraxx Europe Main and iTraxx Europe Crossover). The obligation to clear OTC IRS denominated in all seven currencies is in force for clearing members of EU CCPs as well as large financial counterparties and alternative investment funds. The IRS clearing obligation for IRS denominated in the G4 currencies will apply to small financial counterparties and AIFs from June 21, 2019 and to non-financial counterparties from December 21, 2018, and for IRS denominated in CZK, DKK, HUF, NOK, SEK and PLN, from August 9, 2018. The CDS clearing obligation is in force only for clearing members of EU CCPs. The CDS clearing obligation for large financial counterparties, AIFs and NFCs will apply from August 9, 2019. It will apply to small financial counterparties and AIFs from June 21, 2019.

On Brexit, U.K. firms will lose the passports which enable them to provide certain services across the EU. If the EU and the U.K. fail to reach an agreement on the U.K.'s exit from the EU, U.K. firms may be unable to perform some of the operations for their derivatives contracts with EU clients. In preparation for this eventuality, firms may want to novate these contracts to entities that are established and authorized in an EU27 member state. However, novation of an OTC derivatives contract may trigger the clearing obligation

and result in unexpected taxes or costs to the firms (arising from an event over which they have no control). ESMA considers that this situation gives rise to a disincentive for firms to transfer contracts from U.K. firms to EU firms and would result in an unlevel playing field between EU firms.

To address this, ESMA is proposing to amend the RTS made under EMIR that establish the clearing obligation to introduce a time-limited exemption from the clearing obligation. This would apply for bilateral OTC derivatives contracts that have either not yet become subject to the clearing obligation or have not been novated after a clearing obligation has arisen. The exemption would only apply to a novation to a new EU counterparty and would not apply to other life-cycle events performed by the parties to a derivatives contract. The exemption would be available for a period of 12 months following the U.K.'s exit from the EU. ESMA's view is that this should provide firms with sufficient time to negotiate any novation and for repapering that needs to be completed. ESMA encourages market participants to begin their preparations immediately. The exemption will not come into effect if the EU and U.K. agree the terms of the U.K.'s exit and the withdrawal agreement has entered into force and will not apply if the EU and the U.K. agree to extend the two-year negotiation period under the terms of the Treaty on European Union.

ESMA has submitted to the European Commission proposed amendments to the following three RTS to give effect to the proposed exemption:

I. RTS on the clearing obligation for IRS denominated in G4 currencies (RTS 2015/2205);

II. RTS on the clearing obligation for CDS (RTS 2015/592); and

III. RTS on the clearing obligation for IRS denominated in certain other currencies (RTS 2016/1178).

ESMA's report is available at: https://www.esma.europa.eu/sites/default/files/library/esma70-151-1854_final_report_on_the_co_regarding_novated_trades_to_the_eu.pdf.

UK Financial Regulators Issue Directions for Post-Brexit Temporary Permissions Regime

The FCA and the Prudential Regulation Authority issued Directions detailing how an EEA firm currently passporting into the U.K. should notify each of the regulators of the firm's intention to benefit from the Temporary Permissions Regime in the event of a "no deal" Brexit. The Direction was made under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (made on November 6, 2018). The Regulations provide for a Temporary Permissions Regime for firms that are currently authorized to carry on a regulated activity in the U.K. under an EEA passporting right that have either applied for U.K. authorization prior to the U.K. withdrawal date or have notified the relevant U.K. regulator of their intention to continue carrying on passported activities. Temporary permissions would deem firms within the regime as authorized for their current activities for a maximum of three years, subject to a power for HM Treasury to extend the regime's duration by increments of 12 months.

Both the PRA and the FCA are requiring firms to submit the Temporary Permission Notification Form using Connect between January 7, 2019 and March 28, 2019.

The FCA's Direction is available at: https://www.fca.org.uk/publication/handbook/temporary-permission-notification-direction.pdf, the PRA's Direction is available at: https://www.bankofengland.co.uk/-/media/boe/files/eu-withdrawal/pra-direction-temporary-permission-and-variation-notification-before-exit-day.pdf and the EEA Passport Rights Regulations 2018 are available at: http://www.legislation.gov.uk/uksi/2018/1149/pdfs/uksi_20181149_en.pdf.

UK Legislation Published for Brexit on Bank of England's Functions

On November 7, 2018, HM Treasury laid before Parliament the draft Bank of England (Amendment) (EU Exit) Regulations 2018, together with a draft explanatory memorandum.

The draft Regulations make amendments to the Bank of England Act 1998, the Financial Services Act 2012 and related secondary legislation to ensure that the constitution, responsibilities and functions of the Bank of England continue to be clearly defined after exit day, including in a "no deal" scenario. In the explanatory memorandum accompanying the draft Regulations, HM Treasury confirms that the draft Regulations make only technical changes to existing legislation to ensure that it continues to operate effectively once the U.K. leaves the EU. This includes amendments to information sharing and notification requirements and amendments to certain definitions so that they work in the U.K. after exit day. Amendments to secondary legislation include necessary adjustments to provisions on capital buffers and amounts of cash ratio deposits that certain financial services firms must hold with the BoE.

The Regulations will enter into force on exit day (that is, March 29, 2019 in a "no deal" scenario, or at a later date if there is a negotiated EU-U.K. Withdrawal Agreement).

The draft Regulations are available at: https://assets.publishing.service.gov.uk/media/5be2c51140f0b667a46ce02f/Bank_of_England_Amendment_regs.pdf and the draft explanatory memorandum is available at: https://assets.publishing.service.gov.uk/media/5be2c57440f0b667a46ce030/EM_-_Bank_of_England_amendment_regs.pdf.

Bank of England Provides Further Guidance on Settlement Finality Designation Post-Brexit

On 6 November, 2018, the BoE published the "Dear CEO" letter that it has sent to the Chief Executive Officers of EU CCPs, central securities depositaries and payment systems that are currently designated under the EU Settlement Finality Directive. The designation of these systems is automatically recognized in the U.K. under the SFD framework for automatic recognition, but the U.K. will fall outside the EU framework upon Brexit.

The "Dear CEO" letter follows an earlier letter issued by the BoE in July 2018 and the publication, by HM Treasury, of a draft of the Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2018 on October 31, 2018. The draft Regulations will, once in force, empower the BoE to grant permanent designation to non-U.K. (including EU) systems that are not governed by U.K. law. They also establish a temporary designation regime for EU systems that are currently designated under the SFD.

In the letter, the BoE sets out further details of the permanent designation of non-U.K. systems post-Brexit. It also sets out how EU systems can go about applying to enter the temporary designation regime in a "no deal" scenario (where the U.K. exits the EU without a ratified Withdrawal Agreement) in order to continue to benefit from U.K. SFD protection until the permanent designation process is complete.

Permanent designation of non-UK systems

SFD designation, and the U.K. Settlement Finality Regulations, are currently only available to persons established in the EU where at least part of the system's rulebook is EU law-governed. In the future, U.K. settlement finality protection will in principle be available to any non-U.K. system, regardless of its governing law and wherever its participants are established. Designation of systems by the BoE, and the requirements that designated systems will need to comply with, will be broadly similar to the procedures and requirements currently applying to U.K. law-governed systems, subject to this internationalization.

Details of the application requirements for permanent designation are set out in the U.K. Settlement Finality Regulations, as amended by the draft Regulations.

Systems that will need UK SFD designation post-Brexit

It will not be a U.K. legal requirement for non-U.K. systems to obtain U.K. SFD designation in order to have U.K. participants. However, the BoE expects that EU systems may wish to apply for U.K. SFD designation where they have a participant or participants established in the U.K. or have a U.K.-established indirect participant or participants that fall within the meaning of participants set out in the SFD. This is because designation confers various important carve-outs from U.K. insolvency laws for designated systems that are likely to be of benefit to any system with U.K. participants. However, the regime will not be mandatory.

The temporary designation regime

EU systems wishing to benefit from the temporary regime in the event of a "no deal" scenario must notify the BoE ahead of Brexit. The draft Regulations establishing the regime have been published in draft form but are not yet approved by Parliament. In the letter, the BoE invites EU systems that wish to benefit from the temporary designation regime to indicate their intention to the BoE ahead of the draft Regulations coming into force. The BoE will treat such early notification by EU systems as formal notification under the new Regulations once they enter into force. The BoE stresses in the letter that it cannot treat responses to its previous "Dear CEO" letter in July as such a formal notification.

The temporary regime will allow U.K. settlement finality protection for EU systems for three years following exit day. However, if an EU system wishes to seek permanent designation, it must make an application within the six-month period following exit day.

Existing U.K. designated systems will simply continue to be designated in the U.K. without the need for any more. Such entities will face greater issues in terms of the risks of doing business with EU participants in future, since their U.K. designation would cease to have effect in the EU after Brexit and the EU has no third-country regime in place for SFD purposes.

Non-EU systems that have no present U.K. settlement finality designation and wish to take advantage of the U.K.'s new third-country regime would have to submit a new application for U.K. SFD designation separately but would not be able to use the temporary designation regime.

The "Dear CEO" letter is available at: https://www.bankofengland.co.uk/-/media/boe/files/letter/2018/follow-up-letter-to-eu-systems-designed-under-the-settlement-finality-directive.pdf, the "Dear CEO" July 2018 letter is available at: https://www.bankofengland.co.uk/-/media/boe/files/letter/2018/letter-to-eu-systems-designated-under-the-settlement-finality-directive.pdf, details of the Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2018 are available at: https://finreg.shearman.com/UK-Legislation-Published-to-Preserve-Settlement-F and ESMA's current list of EU systems designated under the SFD is available at: https://www.esma.europa.eu/system/files_force/library/designated_payment_and_securities_settlement_systems.pdf.

Brexit Legislation Published Establishing a Temporary Permissions Regime for EEA Firms Passporting into the UK

On November 6, 2018, the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 were made on November 6, 2018. The Regulations provide, among other things, for a Temporary Permissions Regime for firms that are currently authorized to carry on a regulated activity in the U.K. under an EEA passporting right that have either applied for U.K. authorization prior to the U.K. withdrawal date or have notified the relevant U.K. regulator of their intention to continue carrying on passported

activities. The Regulations come into force on November 7, 2018 except for the following provisions, which come into force on exit day:

I. Regulation 2 (Repeal of passport rights, etc);

II. Regulation 3 (Consequential amendments);

III. Regulation 4 (Saving provision: tax); and

IV. Regulation 24 (Financial Services Compensation Scheme - modifications of Part 15 of the Financial Services and Markets Act 2000).

The EEA Passport Rights Regulations 2018 are available at: http://www.legislation.gov.uk/uksi/2018/1149/pdfs/uksi_20181149_en.pdf and details of the draft regulations are available at: https://finreg.shearman.com/uk-secondary-legislation-published-for-post-brexi.

Consumer Protection

EU Supervisory Authority Will Extend Binary Options Ban Into 2019

On November 9, 2018, ESMA announced that it proposes to renew the prohibition on the marketing, distribution or sale of binary options to retail clients for a further three months from January 2, 2019. ESMA's product intervention powers under the Markets in Financial Instruments Regulation allow it to impose temporary prohibitions or restrictions on certain financial instruments, financial activities or practices to address a significant investor protection concern in the EU. ESMA is renewing the prohibition on binary options because it considers that a significant investor protection concern remains. The measure will be renewed on the same terms as the previous renewal decision that has applied from October 2, 2018 and that will expire on January 1, 2019.

ESMA's Board of Supervisors agreed on the renewal of intervention measures on November 7, 2018. ESMA will publish an official notice on its website in the coming weeks. The new Decision will then be published in the Official Journal of the European Union and will start to apply from January 2, 2019 for a period of three months.

ESMA's announcement is available at: https://www.esma.europa.eu/sites/default/files/library/esma71-99-1057_-_esma_renews_binary_options_prohibition_for_a_further_three_months_from_2_january_2019.pdf and details of the prohibition expiring on January 1, 2019 are available at: https://finreg.shearman.com/EU-Ban-Relating-to-Binary-Options-Extended.

Enforcement

UK Prudential Regulator Fines Senior Managers for Failing to be Open and Cooperative

On November 7, 2018, the PRA announced that it has imposed financial penalties on two senior managers for failing to be open and cooperative about an enforcement action into the U.K. subsidiary of a Japanese bank by the New York Department of Financial Services in 2014. The PRA's enforcement action follows the financial penalties that it imposed in 2017 on this entity and an affiliate for breaching Fundamental Rules 6 and 7 of the PRA Rulebook in that the firms had (i) failed to communicate relevant information about the settlement with the DFS; and (ii) failed to inform the PRA of the potential implications of the DFS matter for certain senior managers.

The latest fines have been imposed on the former Chair and a former Non-Executive Director for failing to inform the PRA that a senior manager might be restricted from conducting U.S. banking activities as a result

of the action by the DFS. The PRA only learnt about the issue after publication of the DFS consent order. This meant that the PRA could not assess the implications or supervise any contingency planning.

The PRA's announcement notes that under the Senior Managers Regime, the current Senior Manager Conduct Rule 4 requires senior managers to disclose appropriately any information of which the PRA or FCA would reasonably expect notice.

The U.S. DFS treats its potential enforcement actions as confidential supervisory information. A firm or individual that wishes to share that information, including with another regulator, must first obtain the permission of the DFS. The DFS will often require a confidentiality agreement from the home country regulator before it allows the disclosure. The result is that firms and individuals can become subject to conflicting requirements.

The PRA's announcement and the final notices are available at: https://www.bankofengland.co.uk/news/2018/november/pra-imposes-financial-penalty-on-akira-kamiya-takami-onodera-for-failure-to-disclose-information, the DFS consent order is available at: https://www.dfs.ny.gov/about/ea/ea141118.pdf and details of the PRA's action against the firm are available at: https://finreg.shearman.com/uk-regulator-takes-enforcement-action-against-fir.

Funds

EU Proposals Aim to Avoid Duplicative Information Requirements on Investment Managers

On November 8, 2018, the ESAs launched a consultation on amendments to the Key Information Document for Packaged Retail and Insurance-based Investment Products. Since January 1, 2018, the EU PRIIPs Regulation has required manufacturers of PRIIPs to prepare and publish a stand-alone, standardized Key Information Document for each of their PRIIPs. Those advising retail investors on PRIIPs, or selling PRIIPs to retail investors, must provide retail investors with a KID in good time before the transaction is concluded.

The PRIIPs Regulation exempts until December 31, 2019 management and investment companies and persons advising on or selling Undertakings for Collective Investment in Transferable Securities from the obligation to produce and provide a PRIIPs KID. The UCITS Directive requires these entities to provide investors with a Key Investor Information Document. As a result, if there were no changes made to the EU legislation, UCITS would be subject to duplicative information requirements from January 1, 2020. To address this situation, the ESAs are proposing to amend the RTS under the PRIIPs Regulation by moving the UCITS KIID requirements to the PRIIPs RTS.

The ESAs are also proposing certain other targeted amendments to the PRIIPs KID requirements. These changes include, among other things, requiring PRIIP manufacturers to include information on past performance in the KID, amending the narrative explanations for performance scenarios, requiring the use of the risk-free rate of return instead of historical prices and requiring the presentation of future performance scenarios as a range either in tabular or graphical format.

The consultation closes on December 6, 2018. It is proposed that the amendments will apply from January 1, 2020. To allow time for the EU legislative process to conclude and to provide PRIIP manufacturers and sellers with at least six months to implement the changes, the ESAs intend to submit the final draft RTS to the European Commission for endorsement in January 2019.

The ESAs confirm that the review of the effects of the PRIIPs framework has been delayed by the European Commission so that further evidence and data can be collected to assist the review. It is likely that further amendments to the PRIIPs Regulation will emerge from that more in-depth review.

The consultation paper is available at: https://eiopa.europa.eu/Publications/Consultations/Joint%20Consultation%20Paper%20on%20targeted%20amendments.pdf.

MiFID II

EU Supervisory Authority Issues Call for Evidence on Periodic Auctions for Equity Instruments

On November 9, 2018, ESMA published a call for evidence on periodic auctions for equity instruments. ESMA wishes to gather more information on the functioning of so-called frequent batch auction trading systems. Frequent batch auctions for equities have rapidly gained market share since the introduction of the Double Volume Cap mechanism under the revised Markets in Financial Instruments package. This has given rise to concerns that this trading may be used as alternative to trading under the DVC waivers and/or as a way to avoid the pre-trade transparency requirements of systematic internalisers. ESMA has conducted a stock-take, assessing seven frequent batch auction systems operating in the EU and sets out its findings in the call for evidence.

In the call for evidence, ESMA distinguishes conventional periodic auctions from frequent batch auctions and outlines the key characteristics of frequent batch auction systems operating in the EU. ESMA sets out its observation of a rising market share for equity trading on frequent batch auctions and considers developments in equity trading since the application of MiFID II. It seeks input on a range of questions focused on these issues.

Responses to the call for evidence are invited by January 11, 2019. The call for evidence will be of particular interest to trading venues and investment firms trading in equity instruments, but ESMA also welcomes responses from any other market participants including trade associations and industry bodies, institutional and retail investors.

ESMA will use the feedback to the call for evidence to assess whether and to what extent frequent batch auction systems can be used to circumvent the MiFID II transparency requirements and will develop appropriate policy measures if necessary.

The call for evidence is available at: https://www.esma.europa.eu/sites/default/files/library/esma70-156-785_call_for_evidence_periodic_auctions_for_equity_instruments.pdf.

EU National Regulators to Confirm If They Intend to Comply With MiFID II Suitability Guidelines

On 6 November, 2018, ESMA published on its website the official translations of its revised Guidelines on aspects of the suitability requirements under the revised Markets in Financial Instruments Directive.

ESMA published the finalized Guidelines in May 2018, following a consultation between July and December 2017. The finalized Guidelines largely confirm ESMA's previous 2012 Guidelines on MiFID I, but have a broader scope and ESMA has added clarifications and refinements where necessary.

Now that the Guidelines have been translated into the official EU languages and published on ESMA's website, national regulators will have a two-month period (expiring on January 6, 2019) in which to notify ESMA whether they comply or intend to comply with the guidelines. National regulators should state their reasons for non-compliance where they do not comply or do not intend to comply.

The Guidelines will take effect from March 7, 2019, replacing the 2012 Guidelines.

The revised Guidelines are available at: https://www.esma.europa.eu/sites/default/files/library/esma35-43-1163_guidelines_on_certain_aspects_of_mifid_ii_suitability_requirements_0.pdf, details of the revised Guidelines are available at: https://finreg.shearman.com/european-securities-and-markets-authority-iss.

Recovery & Resolution

EU Legislation to Update Technical Standards for Resolution Reporting

On November 7, 2018, a Commission Implementing Regulation supplementing the EU Bank Recovery and Resolution Directive was published in the Official Journal of the European Union. The Implementing Regulation sets out Implementing Technical Standards on the information to be provided to resolution authorities to enable them to draw up and implement resolution plans for credit institutions or investment firms. Reflecting experience gained by resolution authorities in resolution planning, the Implementing Regulation repeals and replaces the existing ITS set out in Regulation (EU) 2016/1066, which specifies the procedure and introduced a minimum set of templates for the provision of information to resolution authorities.

The Implementing Regulation introduces a single data point model, as is the practice in supervisory reporting, and introduces common validation rules to safeguard the quality, consistency and accuracy of the data items reported by institutions. Detailed common validation rules will be published electronically by the European Banking Authority on its website.

The Implementing Regulation will apply directly across the EU from November 27, 2018. Transitional provisions will operate so that, for a financial year ending on a date between January 1 and December 31, 2018, the remittance date will be May 31, 2019 at the latest. For a financial year ending on a date between January 1 and December 31, 2019, the remittance date will be April 30, 2020 at the latest.

The Implementing Regulation ((EU) No. 2018/1624) is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1624&from=EN.

Securities

Technical Standards Under the EU Benchmarks Regulation to Apply From January 2019

On 5 November, 2018, a series of ten Commission Delegated Regulations, comprising all of the RTS to supplement the EU Benchmarks Regulation, was published in the Official Journal of the European Union. The Benchmarks Regulation, which took effect directly across the EU in January 2018, sets out the authorization and registration requirements for benchmark administrators, including third-country entities, and the requirements for governance and control of administrators. It provides for different categories of benchmarks depending on the risks involved, imposes additional requirements on benchmarks considered to be "critical" and gives powers to national regulators to mandate, under certain conditions, contributions to or the administration of critical benchmarks. The RTS outline the behaviors and standards expected of administrators of and contributors to benchmarks.

All of the Commission Delegated Regulations will enter into force on November 25, 2018 and they will apply directly across the EU from January 25, 2019. The Commission Delegated Regulations set out RTS in the following areas:

I. the procedures and characteristics of the oversight function for benchmark administrators;

II. the appropriateness and the verifiability of input data, together with the internal oversight and verification procedures of a contributor;

III. the elements of the code of conduct for contributors;

IV. the requirements concerning governance, systems and controls of supervised contributors;

V. the information to be provided by an administrator of a critical or significant benchmark about the benchmark and methodology;

VI. the criteria that a national regulator should take into account when deciding whether a critical benchmark administrator should apply certain additional requirements;

VII. the contents of the benchmark statement and the cases in which an update of such a statement is required;

VIII. the minimum content of the cooperation arrangements between ESMA and third-country national regulators whose legal framework and supervisory practices have been recognized as equivalent;

IX. the form and content of an application for recognition of a third-country administrator with the competent authority of the Member State of reference and of the presentation of information in the notification to ESMA; and

X. the information to be provided on an application for authorization or registration.

Commission Delegated Regulation 2018/1637 on the procedures and characteristics of the oversight function is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1637&from=EN.

Commission Delegated Regulation 2018/1638 on the appropriateness and verifiability of input data and oversight and verification procedures of contributors is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1638&from=EN.

Commission Delegated Regulation 2018/1639 on elements of the code of conduct for contributors is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1639&from=EN.

Commission Delegated Regulation 2018/1640 on governance and systems and controls requirements for supervised contributors is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1640&from=EN.

Commission Delegated Regulation 2018/1641 on information to be provided by an administrator of a critical or significant benchmark about the benchmark and methodology is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1641&from=EN.

Commission Delegated Regulation 2018/1642 on the criteria for assessment of administrators of significant benchmarks is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1642&from=EN.

Commission Delegated Regulation 2018/1643 on the contents of and updates to benchmark statements is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1643&from=EN.

Commission Delegated Regulation 2018/1644 on cooperation arrangements between ESMA and national regulators of third countries recognized as equivalent is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1644&from=EN.

Commission Delegated Regulation 2018/1645 on the form and content of an application for recognition of a third-country administrator and on information in the notification to ESMA is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1645&from=EN.

Commission Delegated Regulation 2018/1646 on information to be included in an authorization application and a registration application is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1646&from=EN.

Upcoming Events

November 28-29, 2018: EBA 7th Annual Research Workshop - Reaping the benefits of an integrated EU banking market

December 18, 2018: ESAs public hearing on draft joint guidelines on the cooperation and information exchange between national regulators supervising banks and other financial institutions for AML/CFT compliance

Upcoming Consultation Deadlines

November 19, 2018: Comment deadline for OCC proposal to permit certain federal savings associations to operate with national bank powers

November 27, 2018: EBA consultation on revised ITS for supervisory reporting under the CRR

December 4, 2018: Deadline for FDIC request for comment with respect to improving communication, transparency and accountability

December 6, 2018: ESA consultation on proposed amendments to the PRIIPs KID RTS

December 7, 2018: FCA consultation on Brexit-Related Handbook Changes and Binding Technical Standards

December 7, 2018: FCA consultation on the temporary permissions regime for EEA firms and investment funds

December 12, 2018: PRA consultation on revisions to supervisory reporting requirements

December 14, 2018: Deadline for Federal Reserve Board request for comment with respect to facilitating faster payment systems

January 2, 2019: BoE/PRA joint consultation on approach to amending financial services legislation under the European Union (Withdrawal) Act 2018

January 2, 2019: PRA consultation on changes to PRA Rulebook and onshored Binding Technical Standards for Brexit

January 2, 2019: BoE consultation on changes to FMI rules and onshored Binding Technical Standards for Brexit

January 2, 2019: BoE consultation on approach to resolution statements of policy and onshored Binding Technical Standards for Brexit

January 11, 2019: ESMA call for evidence on periodic auctions for equity instruments

January 15, 2019: FCA consultation on climate change and green finance

January 16, 2019: Basel Committee consultation on leverage ratio treatment of client-cleared derivatives

January 25, 2019: FCA consultation on open-ended funds and illiquid assets

January 31, 2019: PRA consultation on managing financial risks from climate change

February 8, 2019: ESA consultation on draft joint guidelines on the cooperation and information exchange between national regulators supervising banks and other financial institutions for AML/CFT compliance

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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