



Financial Regulatory Developments Focus

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

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Bank Prudential Regulation & Regulatory Capital

Federal Reserve Board Releases Results for Dodd-Frank Annual Stress Tests

The Board of Governors of the Federal Reserve System recently released results for the Dodd-Frank Annual Stress Tests for the 31 largest bank-holding companies. This is the third round of stress tests required by the Dodd-Frank Wall Street Reform and Consumer Protection Act. According to the press release, all of the largest US-based bank holding companies have passed the test and have been building capital levels at a sufficient level to withstand severe recession and financial market volatility. The quantitative results from these tests are one part of the Federal Reserve Board's annual exercise to evaluate the capital planning and adequacy of large financial institutions. Comprehensive Capital Analysis and Review results will be released on March 11, 2015.

The Federal Reserve Board press release and 2015 Supervisory Stress Test Methodology and Results are available at: <http://www.federalreserve.gov/newsevents/press/bcreg/20150305a.htm>; and <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20150305a1.pdf>.

The US Federal Reserve Board Extends Comment Period for Global Systemically Important Banks Surcharge

On February 26, 2015, the Federal Reserve Board extended until April 3, 2015 the comment period for its proposed rule to implement capital surcharges for global systemically important banks. Comments were originally due by March 2, 2015. The Federal Reserve Board extended the comment period to allow relevant parties more time to analyze the proposed rule and prepare comments. The proposal would establish a methodology to identify if a firm is a G-SIB as well as establish the size of a firm's risk-based capital surcharge. The rule is expected to strengthen the capital positions of these financial institutions and if finalized as proposed, would be higher than international standards.

The Federal Reserve Board press release is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/20150226a.htm>.

The Shearman & Sterling Publication on the G-SIB Surcharge proposed rule is available at: <http://www.shearman.com/~media/Files/NewsInsights/Publications/2015/01/Federal-Reserve-Proposes-SuperEquivalent-Capital-Surcharge-for-Global-Systemically-Important-Banks-FIA-010815.pdf>.

European Banking Authority Publishes Opinion and Report on Credit Valuation Adjustment

On February 25, 2015, the European Banking Authority published an Opinion addressed to the European Commission on Credit Valuation Adjustment. The Opinion deals with several aspects of the calculation of own funds requirements for CVA risk. Sixteen recommendations are listed in the Opinion, including: (i) clarifying by means of an amendment to the Capital Requirements Regulations that exchange-traded derivatives are included in the scope of CVA risk charge; (ii) harmonising the treatment of securities financing transactions in the EU; and (iii) clarifying the standardised method for CVA. The Opinion was published by the EBA simultaneously alongside a Report and Review on CVA and the application of CVA charges to non-financial counterparties established in a third country under the CRR. The documents have now been submitted for consideration by the European Commission.

The Opinion is available at: <http://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-02+%28EBA+Opinion+on+CVA+risk%29.pdf>; and the Report and Review is available at: <http://www.eba.europa.eu/documents/10180/950548/EBA+Report+on+CVA.pdf>.

European Banking Authority Press Release on 2015 EU-wide Stress Test

On March 2, 2015, the EBA issued a press release stating that it will not carry out an EU-wide stress test in 2015, but will instead be preparing for the next exercise in 2016. The EBA will however carry out a transparency exercise in 2015 which will provide data on the balance sheets and portfolios of EU banks.

The EBA press release is available at: <http://www.eba.europa.eu/-/eba-updates-on-future-eu-wide-stress-tests>.

European Banking Authority Publishes Final Draft Standards on Benchmarking Portfolio Assessment

On March 2, 2015, the EBA published final draft regulatory technical standards on benchmarking portfolio assessment standards and assessment sharing procedures under CRD IV, together with final draft implementing technical standards on benchmarking portfolios, templates, definitions and IT solutions. These final drafts specify the framework for EU institutions and national regulators on annual supervisory benchmarking. The EBA simultaneously published its technical advice, for the purposes of the report. All documents have now been submitted to the European Commission for adoption.

The report is available at: <http://www.eba.europa.eu/documents/10180/997875/EBA-RTS-2015-01+and+EBA-ITS-2015-01+Final+Draft+RTS+and+ITS+on+Benchmarking+Exercise.pdf>; and the technical advice is available at: <http://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-04+Technical+Advice+on+benchmarking+pursuant+to+Art+78%289%29.pdf>.

European Banking Authority Launches Discussion Paper on Future of Internal Ratings-Based Approach

On March 4, 2015, the EBA launched a discussion paper on the future of the internal ratings-based approach under the CRR. This is the approach under which certain banks and investment firms with sophisticated risk management systems are allowed to calculate capital requirements based on internally produced parameters. The paper discusses the compromised comparability of capital requirements under the IRB approach due to the framework's high level of flexibility. The EBA believes that a review of the regulatory framework for the IRB approach is required to ensure a higher level of comparability going forward. Comments on the discussion paper may be submitted until 5 May 2015.

The discussion paper is available at: <http://www.eba.europa.eu/documents/10180/1003460/EBA-DP-2015-01+DP+on+the+future+of+IRB+approach.pdf>.

European Banking Authority Consults on Guidelines on Sound Remuneration Policies

On March 4, 2015, the EBA launched a public consultation on its guidelines on sound remuneration policies. The guidelines specify the criteria for allocation of remuneration components into either fixed or variable remuneration, clarify the way in which the remuneration rules in CRD IV should be interpreted by regulators and generally aim to ensure compliance with the bonus cap requirements introduced by CRD IV. The consultation period ends on June 4, 2015.

The consultation is available at: <http://www.eba.europa.eu/documents/10180/1002374/EBA-CP-2015-03+%28CP+on+GLs+on+Sound+Remuneration+Policies%29.pdf>.

European Banking Authority Publishes Opinion on Eligibility Conditions for Covered Bonds and Risk Weight Preferential Treatment Further to Swedish Waiver

On March 5, 2015, the EBA published an opinion on the CRR provision that deals with eligibility conditions for covered bonds in relation to risk weight preferential treatment, including the assets by which eligible covered bonds can be collateralized. Under the CRR, eligible covered bonds can be collateralized by exposures to institutions that qualify for the credit quality step 1, which must not exceed 15% of the nominal amount of outstanding covered bonds of the issuing institution. Exposures to institutions in the EU with a maturity not exceeding 100 days have no CQS 1 requirement, but must at least qualify for CQS 2. After consulting the EBA, national regulators may partially waive these specifications and allow CQS 2 for up to 10% of the total exposure of the nominal amount of outstanding covered bonds of the issuing institution. This would only apply if significant potential concentration problems in the specific member state are due to the application of the CQS 1 requirement.

In December 2014, the Swedish Financial Supervisory Authority submitted a proposal to the EBA for such a waiver. The EBA has assessed the proposal, taking into account factors such as the nature and magnitude of exposures to institutions that covered bonds assume in that jurisdiction. The EBA is of the opinion that sufficient evidence was submitted by the Swedish Regulator to document that the significant potential concentration problem derives from the application of the CQS 1 requirement specified in the CRR. The EBA has stated therefore that the establishment of a partial waiver is justified.

The EBA opinion is available at: <http://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-08+Opinion+on+the+partial+waiver.pdf>.

Bank Structural Reform

UK Completes Bank Structural Reform Legislation

On March 5, 2015, the UK Government announced that the legislation to implement the bank ring-fencing regime has been enacted. The Banking Reform Pensions Regulations, enacted on March 4, 2015, will require a ring-fenced bank to ensure that it cannot be liable for the pension liabilities of other group entities by giving powers to the trustees of a ring-fenced bank's pension scheme to amend the pension scheme, with the consent of employers of the scheme, to achieve ring-fencing of the bank. A ring-fenced bank will be able to seek a court order for release from a shared liability arrangement if the terms of the release cannot be agreed by the parties to the arrangement. The Prudential Regulation Authority, responsible for making the detailed rules applicable to ring-fenced banks, will continue to put those rules in place. The Government expects the ring-fencing regime to be in place by 2019, however, ring-fenced banks have until 2021 to separate their pension schemes.

The announcement is available at: <https://www.gov.uk/government/news/government-completes-banking-reforms> and the legislation is available at: http://www.legislation.gov.uk/ukxi/2015/547/pdfs/ukxi_20150547_en.pdf.

Consumer Protection

The US Consumer Financial Protection Bureau Seeks to Improve Process for Industry Submission of Consumer Credit Card Agreements

On February 24, 2015, the US Consumer Financial Protection Bureau issued a proposal to suspend for one year credit card issuers' obligations to submit their credit card agreements to the CFPB. The suspension is intended to give the CFPB time to develop a simplified and automated electronic submission system. In designing the new system, the CFPB intends to introduce improved reporting formats and faster posting of information. Credit card agreement submissions that would otherwise be due to the CFPB by the first business day on or after April 30, July 31, and October 31 of 2015, and January 31, 2016 would be suspended. Credit card issuers would resume submitting credit card agreements on a quarterly basis starting on April 30, 2016. During the temporary suspension period, the CFPB will collect consumer credit card agreements from the largest card issuers' public websites and post the agreements to its online consumer credit card agreements database.

The proposed rule is available at: http://files.consumerfinance.gov/f/201502_cfpb_proposed-rule_submission-of-credit-card-agreements.pdf.

UK Legislation Enacted to Implement the EU Deposit Guarantee Schemes Directive

On March 5, 2015, UK legislation implementing the revised EU Directive on deposit guarantee schemes was enacted. The Regulations designate the PRA as the UK national authority. The PRA will be responsible for implementing further provisions of the Directive on deposit guarantee schemes through detailed rule-making. The Regulations come into force on March 26, 2015 except for the following provisions, which come into force on July 3, 2015: (i) the requirement for the PRA to notify the Financial Services Compensation Scheme of a firm that may require the intervention of the scheme manager; and (ii) the requirement for the PRA to make rules specifying the maximum compensation available under a compensation scheme.

The Regulations are available at: http://www.legislation.gov.uk/ukxi/2015/486/pdfs/ukxi_20150486_en.pdf.

Derivatives

The US Commodity Futures Trading Commission Provides Notice of the Reopened Comment Period for its Rulemaking Proposals on Position Limits

On February 24, 2015, the US Commodity Futures Trading Commission reopened comment periods for two position limit draft rulemakings for an additional 30 days, in order to accommodate questions and comments that may have arisen from the Energy and Environmental Markets Advisory Committee meeting, which took place on February 26, 2015. The original positional limits proposed rule was overturned in September 2012 based on the US district judge of Washington's determination that the CFTC was not able to prove the rule was "necessary to diminish, eliminate, or prevent" excessive speculation. The comment period for the two rulemakings will now close on March 28, 2015.

The notice in the Federal Register is available at:

<http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2015-03834a.pdf>.

European Securities and Markets Authority Revises Opinion on the Clearing Obligation for Interest Rate Swaps

On March 9, 2015, the European Securities and Markets Authority published a revised opinion on its draft RTS on the clearing obligation for interest rate swaps. ESMA has revised its original opinion to take account of the notification it received from the European Commission that the Commission intended to adopt the draft RTS with amendments. The opinion annexes revised RTS which clarify certain points and propose further revisions to the Commission's amendments, including that: (i) for a period of three years, financial counterparties will be able to apply for the intragroup transaction exemption for their transactions with any third-country entity in the absence of decisions on equivalence; and (ii) the €8 billion clearing obligation threshold applies at individual fund level when the counterparties are UCITS or alternative investment funds.

ESMA's opinion is available at: <http://www.esma.europa.eu/news/ESMA-clarifies-its-interest-rate-swaps-clearing-standards?t=326&o=home>.

ISDA Principles for Derivatives Reporting

On February 26, 2015, the International Swaps and Derivatives Association published a set of principles for improving regulatory transparency of the global derivatives markets through standardizing, aggregating and sharing data. The principles are:

(i) regulatory reporting requirements for derivatives transactions should be harmonized within and across borders; (ii) policy makers should adopt the use of standards to aid improved quality and consistency of compliance with reporting requirements; (iii) market participants and regulators should collaborate to improve consistency in the absence of global standards; (iv) laws and regulations preventing access by authorities to data across borders should be amended or repealed; and (v) reporting progress should be benchmarked to provide incentives to progress reporting.

The ISDA principles are available at: <http://www2.isda.org/news/isda-outlines-key-principles-for-further-improving-regulatory-transparency-and-derivatives-trade-reporting>.

Enforcement

UK Regulator Fines Aviva Investor Global Services Ltd

On February 24, 2015, the Financial Conduct Authority imposed a fine of £17.6 million on Aviva Investor Global Services Ltd for failing to manage conflicts of interest fairly between its customers, and between itself and its customers. Aviva used a "side-by-side" approach in the management of some of its desks, which meant that the same desks were used in the management of funds paying out different levels of performance fees. This structure created conflicts of interest, as traders were incentivized to favor certain funds over others. Weaknesses in the Aviva systems and processes were found which meant that traders were able to delay recording the allocation of executed trades for several hours. Traders who managed funds on a side-by-side basis could evaluate trade performance during the course of the day and, when recorded, allocate trades with favorable intraday price movements to one fund, and trades with unfavorable movements to others, which amounted to an abusive practice generally known as "cherry picking." Compensation in the sum of £132,000,000 has already been made by Aviva to the eight funds it identified as possibly having been adversely affected by its failings.

The FCA's final notice is available at: <http://www.fca.org.uk/static/documents/final-notice/aviva-investors.pdf>.

UK Regulator Imposes Fines and Ban on Bank of Beirut (UK) Ltd

On March 4, 2015, the FCA imposed a fine of £2.1 million on Bank of Beirut (UK) Ltd for repeatedly providing misleading information to the FCA on the bank's financial crime systems and controls. The FCA also banned the bank from securing new customers from high-risk jurisdictions for 126 days, and imposed fines on the bank's internal auditor and former compliance officer of £9,600 and £19,600 respectively for failing to deal with the FCA in an open and cooperative way when asked about steps taken by the bank to mitigate the risk of financial crime. The bank also provided the FCA with false assurances on the improvements made to its processes.

The FCA's final notices are available at: <http://www.fca.org.uk/news/the-financial-conduct-authority-imposes-2-1m-fine-and-places-restriction-on-bank-of-beirut>.

Financial Services

US Financial Regulators Issue Guidance Encouraging Youth Savings Programs

On February 24, 2015, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency, as members of the Financial Literacy and Education Commission ("FLEC"), together with the Financial Crimes Enforcement Network for the US Department of the Treasury, jointly issued guidance to encourage federally insured depository institutions to offer youth savings programs to develop the financial aptitude of young people. The guidance also provides answers to frequently asked questions related to the establishment of these programs. The guidance does not create any new regulatory policy or establish new industry expectations. This effort is consistent with the "Starting Early for Financial Success" focus of the FLEC. Congress created FLEC in 2003 to improve financial capability and education in the United States.

The guidance is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20150224a1.pdf>.

European Securities and Markets Authority Recommendations to National Regulators on Best Execution Requirements

On February 25, 2015, ESMA published the results of its peer review of supervision and enforcement of the best execution provisions in the Market in Financial Instruments Directive by national regulators. Investment firms are required to provide best execution for their clients when executing their client's orders. ESMA's review found that implementation of the best execution provisions in MiFID I varied across the EU. To address the issue, ESMA recommends several improvements, including: (i) prioritization of best execution by national regulators; (ii) the allocation of supervisory resources; and (iii) the adoption of a proactive approach to monitoring compliance with best execution requirements, including through onsite inspections. ESMA intends to work with national regulators to give effect to the recommendations.

The peer review is available at: <http://www.esma.europa.eu/news/Press-Release-ESMA-publishes-peer-review-best-execution-under-MiFID>.

European Banking Authority Recommends Clarification for Lending-based Crowdfunding

On February 26, 2015, the EBA published its opinion on lending-based crowdfunding, recommending that the applicability of existing EU law to the activity be clarified. The EBA considers that such clarification is necessary to avoid regulatory arbitrage across the EU and to ensure a level playing field as EU Member States have adopted different approaches to regulating lending-based crowdfunding. The opinion is addressed to the European Commission, the European Parliament and the EU Council.

The EBA opinion is available at: <http://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-03+%28EBA+Opinion+on+lending+based+Crowdfunding%29.pdf>.

UK Senior Managers and Certification Regime Application Date Set – March 7, 2016

On March 3, 2015, the UK Government published its response following the consultation to extend the Senior Managers and Certification Regime to UK branches of non-UK firms. The response announces that the Senior Managers and Certification Regime will apply from March 7, 2016 and be extended to apply to UK branches of banks and insurers established outside of the UK. On March 4, 2015, related secondary legislation was enacted which implements the extension and other provisions of the regime more generally. Relevant firms will need to notify the PRA and the FCA by February 8, 2016 of the approved persons who are to be senior managers under the new regime. The regulators consulted on proposed rules for the Senior Managers and Certification Regime in 2014 as it applied to UK banks and insurers but have waited to implement final rules pending the decision on whether the regime would be extended to UK branches.

The response document is available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408143/Regulating_individual_conduct_in_banking_response_document.pdf and the secondary legislation is available at: http://www.legislation.gov.uk/uksi/2015/492/pdfs/uksi_20150492_en.pdf and http://www.legislation.gov.uk/uksi/2015/490/pdfs/uksi_20150490_en.pdf.

Funds

New Volcker Frequently Asked Question 13 Clarifies the Scope of the Covered Funds Marketing Restriction

On February 27, 2015, The Volcker Inter-Agency Group posted a new frequently asked question (“FAQ 13”) clarifying the scope of the marketing restriction under the Solely Outside the US (“SOTUS”) covered fund exemption. FAQ 13 adopts the position that the marketing restriction applies only to the activities of a foreign banking entity (including its affiliates) that seeks to rely on the SOTUS covered fund exemption and does not apply to where the foreign banking entity seeks to invest in a covered fund that is sponsored and marketed by a third party. As defined in the FAQ, “third-party covered fund” means a covered fund in which “the foreign banking entity (including its affiliates) does not sponsor, or serve, directly or indirectly, as the investment manager, investment adviser, commodity pool operator or commodity trading advisor to, the covered fund.” This view is consistent with limiting the extraterritorial application of section 13 to foreign banking entities while seeking to ensure that the risks of covered fund investments by foreign banking entities occur and remain solely outside of the United States.

The Volcker Rule FAQ is available at: <http://www.federalreserve.gov/bankinfo/volcker-rule/faq.htm#13>.

Market Infrastructure

EU General Court Finds Against the European Central Bank’s CCP Location Policy

On March 4, 2015, the EU General Court delivered its judgment on the UK Government’s challenge of the European Central Bank’s CCP location policy set out in the ECB’s Eurosystem Oversight Policy Framework. The EU General Court has annulled the Eurosystem Oversight Policy Framework in so far as it sets a requirement for CCPs involved in the clearing of securities to be located within the Eurozone. The policy’s aim was to prevent CCPs in the European Union but outside the Eurozone from being able to have access to ECB Euro settlement facilities. The outcome is that UK CCPs will have access to Euro settlement facilities with the ECB, as generally required under EMIR, without being forced to relocate their businesses.

The judgment is available at:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=162667&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=376135>.

European Banking Authority Consults on Technical Standards for Prudential Requirements for CSDs

On February 27, 2015, the EBA launched a consultation on proposed draft RTS on the prudential requirements for central securities depositories. The EBA is required to prepare the RTS under the EU Regulation on Settlement and Central Securities Depositories, which aims to increase the safety and efficiency of securities settlement and settlement infrastructures. The EBA is consulting on three proposed draft RTS which cover: (i) capital requirements for CSDs; (ii) the additional risk-based capital surcharge applicable to CSDs carrying out ancillary banking activities; and (iii) the framework and tools for monitoring, measuring, managing and reporting of the credit and liquidity risks related to any ancillary banking activities offered by a CSD. The consultation closes on April 27, 2015. The EBA must submit the draft RTS to the Commission by June 18, 2015.

The consultation is available at: <http://www.eba.europa.eu/documents/10180/995469/EBA-CP-2015-02+%28CP+on+RTS+on+prudential+requirements+for+CSDs%29.pdf>.

UK Legislation Implementing the EU Regulation on Settlement and Central Securities Depositories

On February 24, 2015, UK legislation implementing part of the EU Regulation on Settlement and Central Securities Depositories was enacted. The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2015 amend relevant UK legislation to reflect the change brought in by the EU Regulation that requires national regulators to notify ESMA of any

designation of a payment or securities settlement system. In the past, such notifications were made to the European Commission. The UK designated national regulators for these purposes are the Bank of England and the FCA.

The UK legislation is available at: http://www.legislation.gov.uk/ukxi/2015/347/pdfs/ukxi_20150347_en.pdf.

Additional Benchmarks Brought Within UK Regulatory Perimeter

On February 23, 2015, UK legislation was enacted to bring additional benchmarks within the UK regulatory perimeter. The additional benchmarks are ISDAFIX, Sterling Overnight Index Average, also known as SONIA, Repurchase Overnight Index Average, also known as RONIA, WM/Reuters London 4 p.m. Closing Spot Rate, London Gold Fixing, LBMA Silver Price and ICE Brent Index. The LIBOR benchmark was already subject to regulation. Bringing the additional benchmarks within the regulatory perimeter are a result of the initial recommendations on benchmarks of the Fair and Effective Markets Review. A Policy Statement was also published by the FCA on March 10, 2015, on the seven new benchmarks it will be regulating and supervising. This includes the FCA's final rules amending Chapter 8 of the Market Conduct Sourcebook (Mar 8), which was originally designed for benchmarks determined through a submission process, such as LIBOR. The rules have now been adapted to the new benchmarks being brought into regulation, and in particular to benchmarks without submitters. The new rules also introduce perimeter guidance to identify persons that carry out the regulated activity of acting as benchmark submitters. The new legislation and FCA rules enter into force on April 1, 2015.

The legislation and FCA Policy Statement are available at:

http://www.legislation.gov.uk/ukxi/2015/369/pdfs/ukxi_20150369_en.pdf; and <http://www.fca.org.uk/static/documents/policy-statements/ps15-06.pdf>.

HM Treasury Publishes Legislation in Preparation for Newly Formed Payment Systems Regulator Becoming Fully Operational

On March 5, 2015, HM treasury published the Banking Act 2009 (Inter-Bank Payment Systems) (Disclosure and Publication of Specified Information) (Amendment) Regulations 2015. These Regulations widen the remit of information-sharing between the Bank of England and the Payment Systems Regulator, allowing the BoE to share information that it has obtained through its oversight of interbank payment systems with the PSR. The BoE will therefore no longer be limited to only share information with the PSR that is relevant to financial stability. On the same day, HM Treasury also published the Payment Services (Amendment) Regulations 2015. These regulations amend the Payment Services Regulations 2009 and transfer the supervision and enforcement functions on access to payment systems from the Competition Markets Authority to the newly formed PSR. Both regulations enter into force on April 1, 2015, the date on which the PSR becomes fully operational.

The Regulations and Explanatory Memoranda are available at:

http://www.legislation.gov.uk/ukxi/2015/422/pdfs/ukxi_20150422_en.pdf;
http://www.legislation.gov.uk/ukxi/2015/422/pdfs/ukxiem_20150422_en.pdf;
http://www.legislation.gov.uk/ukxi/2015/488/pdfs/ukxi_20150488_en.pdf; and
http://www.legislation.gov.uk/ukxi/2015/488/pdfs/ukxiem_20150488_en.pdf.

Recovery & Resolution

European Banking Authority Advice to European Commission on the EU Resolution Framework for Banks

On March 6, 2015, the EBA published three sets of technical advice to the European Commission on the resolution framework for EU banks and a related comparative analysis of the recovery plans of 27 European cross-border banking groups. The technical advice covers (i) the definition of critical functions and core business lines; (ii) the deferral of ex-post contributions to the resolution fund; and (iii) rules for the exclusion of liabilities from the application of the bail-in tool for which the EBA states that resolution authorities should assess each case for suitability for exemption to avoid motivating bank structures for the purpose. The technical advice will assist the European Commission to prepare secondary legislation on these issues that are required under the Banking Recovery and Resolution Directive.

The EBA documents are available at: <http://www.eba.europa.eu/-/the-eba-advises-on-resolution-procedures-for-eu-banks>.

European Banking Authority Consults on Information to be Held by Firms on Financial Records

On March 6, 2015, the EBA launched a consultation on proposed RTS on the detailed records of financial contracts that banks and relevant investment firms will need to maintain. Under the BRRD, resolution authorities may temporarily suspend the termination rights of any party to a contract with a firm that is under resolution. The proposed draft RTS set out the minimum information on financial contracts which a firm will be obliged to keep detailed information of. Member states would be able to impose additional requirements if appropriate. The consultation closes on June 6, 2015.

The consultation paper is available at: <http://www.eba.europa.eu/documents/10180/1006126/EBA-CP-2015-04+%28CP+on+Detailed+records+of+financial+contracts%29.pdf>.

Amending Legislation on Application of the Banking Act 2009 to UK-based CCPs and Clearing Houses

On February 24, 2015, secondary legislation was enacted which amends the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013. The amending regulations correct the original legislation and ensure that the special resolution regime under the Banking Act 2009 applies to UK-based CCPs regardless of whether or not they are authorized under the European Market Infrastructure Regulation, from March 18, 2015 until such time as the CCP becomes authorized. The amending regulations come into force on March 18, 2015. The special resolution regime under the Banking Act 2009 will apply to all EMIR authorized CCPs upon that authorization.

The amending regulations are available at: http://www.legislation.gov.uk/ukxi/2015/348/pdfs/ukxi_20150348_en.pdf.

Shadow Banking

The Financial Stability Board and the International Organization of Securities Commissions Propose Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions

On March 4, 2015, the Financial Stability Board and the International Organization of Securities Commissions published for second public consultation Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions. The proposed methodologies for identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions (“NBNI G-SIFIs”) take into consideration the responses received to the first consultative document issued in January 2014. These methodologies contain a high-level framework and an operational framework for identifying G-SIFIs that would apply across NBNI financial entities, as well as detailed NBNI sector-specific methodologies for finance companies, market intermediaries, investment funds and asset managers. The proposed methodologies provide for a more supervisory judgment compared to the G-SIB and G-SII methodologies to counter limitations in data availability and the range of business models of different types of NBNI G-SIFIs. The consultative document does not propose any specific entities for designation, nor any policy measures that would apply to NBNI G-SIFIs. It is intended that the policy measures will be developed once the methodologies are finalized. Comments should be submitted by May 29, 2015.

The second public consultation is available at: <http://www.financialstabilityboard.org/wp-content/uploads/2nd-Con-Doc-on-NBNI-G-SIFI-methodologies.pdf>.

Events

March 16, 2015: FCA briefing on the EU Market Abuse Regulation (first in a series).

March 18, 2015: CFTC public roundtable on Cybersecurity and System Safeguards Testing.

March 23, 2015: EBA public hearing on its proposals for prudential requirements for CSDs.

April 8, 2015: EBA public hearing on the future of the IRB approach.

May 4, 2015: EBA public hearing on Guidelines on sound remuneration policies.

May 8, 2015: EBA public hearing on financial contracts under the BRRD.

May 8, 2015: EBA public hearing on Guidelines on sound remuneration policies.

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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