

Financial Regulatory Developments Focus

In this week's newsletter, we provide a snapshot of the principal US, 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 (please click on any title to go directly to the corresponding discussion):

Bank Prudential Regulation & Regulatory Capital	3
US Federal Reserve Board Issues Final Rule Providing Information on Revised Capital Rules for Non-Traditional Stock Corporations	3
US Federal Reserve Board Finalizes Revised FR Y-15 Reporting Requirements and Seeks Comments on Section 165-Related Revisions to Form FR Y-7	3
European Banking Authority Reports on Administrative Penalties Published on Anonymous Basis	3
European Banking Authority Draft Implementing Technical Standards Amending Regulation on Supervisory Reporting of Institutions and Financial Reporting	4
European Banking Authority Issues Revised List of Validation Rules for Supervisory Reporting	4
Regulatory Technical Standards under EU Financial Conglomerates Directive Published	4
European Banking Authority Consults on Draft Guidelines for Collection of Information for Internal Capital Adequacy Assessment Process and Internal Liquidity Adequacy Assessment Process under the Capital Requirements Directive	4
EU Regulation on Extension of Transitional Provisions for Exposures to CCPs Published in Official Journal of the European Union	5
Bank of England Identifies Main Current Risks in UK Financial System	5
UK Regulator Policy Statement on Implementation of UK Leverage Ratio Framework	5
Financial Stability Board Progress Report on Principles and Recommendations for Enhancing Risk Disclosures of Banks	6
Revised Standardized Approach to Credit Risk Proposed at International Level	6
Compensation	6
European Central Bank Decision on Exclusion of Staff Members from Presumption of Having a Material Impact on Risk Profile of a Supervised Bank Published in Official Journal of the European Union	6
Conduct & Culture	7
UK Regulator Publishes Guide to Enforcement under Senior Managers Regime	7
UK Regulator Publishes Thematic Review on Treatment of Confidential and Inside Information	7
Consumer Protection	8
UK Regulator Still Concerned About Suitability of Retail Investment Portfolios	8
Cyber Security	8
US Financial Crimes Enforcement Network Director Speech on Financial Intelligence Data and Cyber Threats	8
European Union Agency for Network and Information Security Reports on the Secure Use of Cloud Computing in the Finance Sector	8
Derivatives	9
First EU Clearing Obligation to Apply from June 2016	9
European Securities and Markets Authority Consults on Revised Standards for Data Access under EMIR	9
Enforcement	9
European Commission Closes Antitrust Proceedings against 13 Banks	9
Financial Market Infrastructure	10
US Office of the Comptroller of the Currency Issues Updated Guidance Regarding Risk Assessment System	10
US Federal Deposit Insurance Corporation Chairman, US Comptroller of the Currency and US Consumer Financial Protection Bureau Director Deliver Remarks to US House of Representatives Financial Services Committee Discussing Recent Developments by the US Financial Stability Oversight Council in Addressing Systemic Risk	10
European Securities and Markets Authority Consults on CCP Time Horizon for Liquidation Period	11
UK Government Consults on Implementation of Central Securities Depositories Regulation	11
Committee on Payments and Market Infrastructures and International Organization of Securities Commissions Report on Implementation of Principles for Financial Market Infrastructures	11

Financial Services	12
European Supervisory Authorities Publish List of Identified Financial Conglomerates	12
European Supervisory Authorities Publish Discussion Paper on Automation in Financial Advice	12
EBA Discussion Paper on Strong Customer Authentication and Secure Communication under the Revised Payment Services Directive	12
European Banking Authority Consults on Draft Technical Standards on the Separation of Payment Card Schemes and Processing Entities under the Interchange Fee Regulation	13
European Banking Authority Consults on Draft Regulatory Technical Standards on Information Sharing Between National Regulators under Revised Payment Services Directive	13
UK Government Publish Policy Paper on Boosting Competition in the UK	13
Payment Systems Regulator Consultation on European Interchange Fee Regulation	13
UK Payment Systems Regulator Press Release on Card Schemes Subject to Domestic Interchange Fee Caps	14
Financial Action Task Force Report on Money Laundering through Physical Transportation of Cash	14
Funds	14
International Organization of Securities Commissions Report on Hedge Funds	14
MiFID II	15
European Securities and Markets Authority Final Report on Guidelines for Complex Debt Instruments and Structured Deposits	15
European Securities and Markets Authority Publishes Further Technical Standards under MiFID II	15
Recovery & Resolution	15
European Banking Authority Compares Recovery Plans across the EU	15
European Commission Requests Ten Countries to Implement EU Deposit Guarantee Schemes Directive	16
Bank of England Consults on Minimum Requirement for Own Funds and Eligible Liabilities	16
UK Prudential Regulation Authority Consults on Relationship between Regulatory Buffers and MREL	17
UK Regulator Confirms Scope for Consultation on Ensuring Operational Continuity in Resolution	17
Bank of England Confirms Approach to Exercising its Power to Direct Firms to Address Impediments to Resolvability	17
Shadow Banking	18
US Board of Governors of the Federal Reserve System Vice Chairman Delivers Speech Regarding Financial Stability and Shadow Banks	18
People	18
European Supervisory Authorities' Term of Office for Chair and Executive Directors Extended	18
European Banking Authority Appoints Members of Management Board and Alternate Chairperson	18
European Securities and Markets Authority Appoints New Chair of Market Integrity Standing Committee	19
Upcoming Events	19
Upcoming Consultation Deadlines	19

Bank Prudential Regulation & Regulatory Capital

US Federal Reserve Board Issues Final Rule Providing Information on Revised Capital Rules for Non-Traditional Stock Corporations

On December 4, 2015, the US Board of Governors of the Federal Reserve System issued a final rule clarifying the application of the revised capital framework, originally issued in June 2013, to depository institution holding companies that are organized as non-stock entities, such as limited liability companies and partnerships. The final rule illustrates how capital instruments that are issued by firms that are not organized as traditional stock corporations may qualify as regulatory capital under the revised regulatory capital framework. The final rule, which is substantively similar to the proposed rule issued in December 2014, goes into effect January 1, 2016. Separately, the final rule notes the Federal Reserve Board's intention to issue separate regulatory capital rules to clarify how: (i) depository institution holding companies that are employee stock ownership plans; and (ii) savings and loan holding companies that are personal or family trusts, rather than business trusts, in each case, will be treated under the capital rules.

The final rule is available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20151204a1.pdf>.

US Federal Reserve Board Finalizes Revised FR Y-15 Reporting Requirements and Seeks Comments on Section 165-Related Revisions to Form FR Y-7

On December 11, 2015, the Federal Reserve Board published a final rule to revise certain elements of its "Banking Organization Systemic Risk Report" (Form FR Y-15) that will become effective as of December 31, 2015. However, the new requirement to file the form on a quarterly basis has been extended until June 30, 2016, and the effective date of the new requirements for reporting short-term wholesale funding (Schedule G) has been extended to December 31, 2016. While the preamble to the final rule notes that reporting requirements for Intermediate Holding Companies that foreign banking organizations are required to designate or establish under Dodd-Frank Act Section 165 have not yet been proposed, under current requirements IHCs with a US bank subsidiary and \$50 billion or more in total consolidated assets would be required to file the FR Y-15 beginning with the next filing date following its establishment. Commenters requested an extension for IHCs, but the Federal Reserve Board indicated it would invite comment on this issue when reporting requirements for IHCs are proposed.

On December 2, 2015, the Federal Reserve Board proposed certain new line items to its "Annual Report of Foreign Banking Organizations" (Form FR Y-7) to collect information from foreign banking organizations required to comply with the enhanced prudential standards for foreign banking organizations prescribed by Section 165 of the Dodd-Frank Act. Specifically, the proposed revisions would collect information applicable to the US risk committee and home country capital stress testing requirements.

The final rule for Form FR Y-15 is available at: <https://www.federalregister.gov/articles/2015/12/14/2015-31356/agency-information-collection-activities-announcement-of-board-approval-under-delegated-authority>.

The proposed revisions to Form FR Y-7 are available at: <https://www.federalregister.gov/articles/2015/12/02/2015-30538/proposed-agency-information-collection-activities-comment-request>.

European Banking Authority Reports on Administrative Penalties Published on Anonymous Basis

On December 2, 2015, the European Banking Authority published a report on the administrative penalties for breach of national law implementing the Capital Requirements Directive imposed by Member States and published on an anonymous basis. Under the CRD, Member States must publish details of any administrative penalties imposed for breach of the relevant national law except in certain circumstances where the CRD allows the publication to be anonymous. The EBA is required to report on any divergences between member states in their approach to the publication of penalties on an anonymous basis and in the duration of the publication under national law. The EBA makes the following recommendations: (i) the penalties should be published on a dedicated part of the website to

enhance accessibility; (ii) the decision should also be published in English or a summary thereof; and (iii) the grounds for deciding to publish a decision on an anonymous basis should be disclosed, where appropriate.

The report is available at: <http://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-18+Report+on+publication+of+administrative+penalties+on+anonymous+basis.pdf>.

European Banking Authority Draft Implementing Technical Standards Amending Regulation on Supervisory Reporting of Institutions and Financial Reporting

On December 8, 2015, the EBA published draft Implementing Technical Standards amending the Implementing Regulation on the supervisory reporting of institutions with regard to financial reporting (known as FINREP). This follows on from the changes made to the International Accounting Standards that were issued in July 2014. The new standards supersede the reporting standard for financial instruments in force in the EU since 2005 and change the way that financial instruments are accounted for. The changes require significant amendments to the FINREP reporting templates and instructions. The new standards will apply to: (i) banks that are required to prepare consolidated financial statements in accordance with International Financial Reporting Standards; (ii) banks that are required to use the IFRS for the determination of own funds; and (iii) certain investment firms. Comments are due by March 8, 2016.

The consultation and related documents are available at: <http://www.eba.europa.eu/-/eba-launches-consultation-on-finrep-using-ifs-9>.

European Banking Authority Issues Revised List of Validation Rules for Supervisory Reporting

On December 10, 2015, the EBA published a revised list of validation rules for submitting supervisory reporting data. The rules detail the standards and formats that are to be used for submissions of data by national regulators under the Capital Requirements Directive IV. The revised list displays the rules that have been deactivated due to technical issues or incorrectness.

The revised list is available at: <http://www.eba.europa.eu/-/eba-issues-revised-list-of-its-validation-rul-8>.

Regulatory Technical Standards under EU Financial Conglomerates Directive Published

On December 11, 2015, a Commission Delegated Regulation, in the form of Regulatory Technical Standards, was published setting out criteria for the assessment of intra-group transactions and risk concentrations under the EU Financial Conglomerates Directive. The RTS provide national regulators and coordinators with criteria for assessing whether intra-group transactions and risk concentrations are significant and provide for more harmonized reporting of information by financial conglomerates. The FCD provides for the supplementary prudential supervision on a group-wide basis of groups including banks, insurance undertakings and investment firms which are part of a financial conglomerate which provide services and products in different sectors of the financial markets. The Directive covers, amongst other things, the solvency position and risk concentration at the level of the conglomerate, intra-group transactions, internal risk management processes at conglomerate level and regulations on the fit and proper character of the conglomerate's management.

The Delegated Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.326.01.0034.01.ENG&toc=OJ.L:2015:326:TOC.

European Banking Authority Consults on Draft Guidelines for Collection of Information for Internal Capital Adequacy Assessment Process and Internal Liquidity Adequacy Assessment Process under the Capital Requirements Directive

On December 11, 2015, the EBA published a consultation paper on draft Guidelines for the collection of information for the Internal Capital Adequacy Assessment Process and the Internal Liquidity Adequacy Assessment Process under the CRD. The consultation forms part of the Supervisory Review and Evaluation Process and follows on from the criteria and methodologies specified in the EBA Guidelines on common procedures and methodologies for SREP. The Guidelines aim to facilitate the assessment of ICAAP and ILAAP as well as to create a consistent approach to the

ICAAP and ILAAP frameworks and to the assessment of reliability of the own capital and liquidity estimates of financial institutions. The draft Guidelines set out, amongst other things, the general criteria for national regulators for the collection of ICAAP and ILAAP information from institutions and will be finalized following the completion of the consultation. The Guidelines are expected to apply from June 30, 2016. Comments are due by March 11, 2016.

The consultation paper is available at: <http://www.eba.europa.eu/documents/10180/1307235/EBA-CP-2015-26+%28CP+on+GL+on+ICAAP+and+ILAAP+Information%29.docx>.

EU Regulation on Extension of Transitional Provisions for Exposures to CCPs Published in Official Journal of the European Union

On December 11, 2015, the Implementing Regulation on the extension of the transitional periods for own funds requirements for exposures to CCPs as set out in the Capital Requirements Regulation was published in the Official Journal of the European Union. The Implementing Regulation extends the transitional period for regulatory capital requirements for EU banks' exposures to CCPs from December 15, 2015 to June 15, 2016. The extension is intended to allow further time for CCPs, both from the EU and from non-EU jurisdictions, to become authorized or recognized under the European Market Infrastructure Regulation. This is linked to the current consultation on margin holding period for exchange-traded derivatives, published by the European Securities and Markets Authority on December 14, 2015, which should result in technical standards paving the way for recognition in the new year. The provision aims to minimize disruption to financial markets and to prevent institutions from being penalized through higher own funds requirements during the processes of authorization and recognition of existing CCPs. The Implementing Regulation comes into effect on December 12, 2015.

The Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.328.01.0108.01.ENG&toc=OJ:L:2015:328:TOC.

ESMA's consultation on margin holding period is available at: <https://www.esma.europa.eu/press-news/esma-news/esma-consults-margin-period-risk-ccps%E2%80%99-client-accounts>.

Bank of England Identifies Main Current Risks in UK Financial System

On December 1, 2015, the Bank of England published its Financial Stability Report in which the FPC explains the key risks affecting the UK financial system. The report states that UK banks are now more resilient than they were before the global financial crisis with the result that they are now more willing to make credit available. Risks relating to Greece and its financing needs have fallen significantly since publication of the BoE's FSR in July 2015. However, risks originating from advanced economies have moved to emerging market economies and asset prices are deemed to be vulnerable to a crystallization of risks in emerging markets. The FPC states that it is not currently seeking further structural increases in capital requirements for the system as a whole and is also maintaining the UK countercyclical capital buffer rate at 0%. With regards to effective arrangements for bank resolution, the FPC deems that an effective resolution regime has been established in the UK, in part, through ring-fencing, and that new requirements for total loss-absorbing capacity for global systematically important banks will ensure that banks have liabilities that can absorb losses and are able to recapitalize banks in resolution. The report also states that cyber risk continues to be a threat to the UK financial system.

The report is available at: <http://www.bankofengland.co.uk/publications/Pages/fsr/2015/dec.aspx>.

UK Regulator Policy Statement on Implementation of UK Leverage Ratio Framework

On December 7, 2015, the Prudential Regulation Authority published a policy statement on the implementation of the UK's Leverage Ratio Framework, providing feedback to responses to its previous consultation paper. The Financial Policy Committee directed the PRA, on July 1, 2015, to implement a UK LRF applying: (i) a minimum leverage requirement of 3% to major UK banks and building societies on a consolidated basis; (ii) a supplementary Leverage Ratio Buffer of a firm's institution-specific G-SII buffer rate; and (iii) a countercyclical LRB of 35% of a firm's

institution-specific countercyclical capital buffer rate. The PRA's policy statement applies to PRA-regulated banks and building societies with retail deposits of £50 billion or more. The PRA is implementing the FPC's requirements as proposed, except that it is extending its proposed transition period for daily averaged leveraged ratio requirements by 12 months, ending on December 31, 2017, while maintaining the 12-month transitional period for implementing the daily averaging reporting requirement. This would allow firms additional time to improve the comparability and accuracy of averaged numbers without compromising the monitoring of the UK leverage framework. The PRA has also published supervisory statements on the UK leverage ratio, instructions for completing data items and on the capital requirements for major UK banks and building societies.

The policy statement and supervisory statements are available at:

<http://www.bankofengland.co.uk/pr/Pages/publications/ps/2015/ps2715.aspx>.

Financial Stability Board Progress Report on Principles and Recommendations for Enhancing Risk Disclosures of Banks

On December 7, 2015, the Financial Stability Board published a progress report from the Enhanced Disclosure Task Force on the implementation of the EDTF's recommendations for enhancing risk disclosures of banks. The report, which covers 40 global or domestic systemically important banks, includes updates based on 2014 annual reports as well as self-assessments by banks and assessments made by users of financial disclosures. The report states that the self-assessments provided by banks show disclosure of 82% of the information recommended by the EDTF. This represents an increase of 7% from the previous year. The report also states that there are still significant opportunities for banks to improve credit risk disclosures and that credit risk disclosures vary significantly across different countries, with UK banks having the highest implementation rates.

The report is available at: <http://www.financialstabilityboard.org/wp-content/uploads/2015-Progress-Report-on-Implementation-of-the-EDTF-Principles-and-Recommendations.pdf>.

Revised Standardized Approach to Credit Risk Proposed at International Level

On December 10, 2015, the Basel Committee on Banking Standards published a second consultation on revisions to the Standardized Approach for credit risk. The consultation seeks to address concerns raised during the first consultation which proposed that references to external ratings for exposures to banks and corporates be removed and that those exposures should be assigned risk weights based on two risk drivers. The Basel Committee is therefore proposing that different approaches should be adopted, depending on whether a jurisdiction prohibits the use of external ratings for regulatory purposes. For exposures to banks: (i) in jurisdictions that allow the use of ratings for regulatory purposes, ratings would be the primary source to determine risk weights for rated exposures, subject to due diligence requirements; and (ii) in jurisdictions that do not allow the use of ratings for regulatory purposes and for unrated exposures in all jurisdictions, exposures would be classified into three different buckets, subject to certain criteria being met. The Basel Committee is also proposing revised approaches for exposures to corporates, secured by real estate, multilateral development banks, retail and defaulted exposures and off-balance sheet items. Responses to the consultation are due by March 11, 2016.

The consultation is available at: <http://www.bis.org/bcbs/publ/d347.pdf>.

Compensation

European Central Bank Decision on Exclusion of Staff Members from Presumption of Having a Material Impact on Risk Profile of a Supervised Bank Published in Official Journal of the European Union

On December 1, 2015, the Decision of the European Central Bank on the procedure to exclude staff members from the presumption of having a material impact on a supervised credit institution's risk profile was published in the Official Journal of the European Union. The Decision relates to the remuneration requirements specified in the CRD. The

Decision sets out the procedure that supervised credit institutions should follow for the notification and application to the ECB to exclude members of staff or categories of staff from the presumption of having a material impact on their risk profile. The Decision sets out: (i) the general information required and to be provided to the ECB; (ii) the documentation required to show that a business unit is not material; (iii) the documentation required to show that a staff member's professional activities have no material impact on the risk profile of a material business unit; (iv) the additional documentation required to substantiate applications for staff members awarded a total remuneration of €1,000,000 or more; (v) the period for filing notifications; and (vi) details related to the assessment process of the ECB. The decision entered into force on December 2, 2015.

The Decision is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.314.01.0066.01.ENG&toc=OJ:L:2015:314:TOC.

Conduct & Culture

UK Regulator Publishes Guide to Enforcement under Senior Managers Regime

On December 9, 2015, the Financial Conduct Authority published its Policy Statement setting out guidance on how it intends to enforce the new individual accountability rules under the Senior Managers Regime, the Certification Regime and the new Conduct Rules. The FCA's guidance, which will apply from March 7, 2016 when the new rules come into force, amends the Enforcement Guide and the Decision Procedure and Penalties Manual. The Policy Statement includes the FCA's feedback to responses to its proposed guidance, including a confirmation that the FCA does not intend to add any additional guidance on the types of conduct it would consider as falling far below what would reasonably be expected of a senior manager when assessing whether to bring criminal proceedings against an individual alleging that his decision caused a firm to fail or to refer the matter to another prosecuting authority. The FCA considers that the FCA Handbook already contains enough guidance on the standards expected of senior managers. The FCA guidance does not include guidance on the presumption of responsibility for senior managers because the FCA intends to wait for the outcome of the Parliamentary debate on whether to approve the Government's proposal to replace the presumption of responsibility with a duty of responsibility.

The guidance is available at: <http://www.fca.org.uk/static/documents/policy-statements/ps15-29.pdf>.

Our client note on the Government's proposal is available at:

<http://www.shearman.com/~media/Files/NewsInsights/Publications/2015/11/Implementation-Issues-Arising-from-the-Revised-UK-Senior-Manager-and-Certification-Regime-FIA-100215.pdf>.

UK Regulator Publishes Thematic Review on Treatment of Confidential and Inside Information

On December 10, 2015, the FCA published its thematic review on flows of confidential and inside information, presenting the results of an evaluation into how a sample of investment banks manage the confidential and inside information that they receive and generate. The review outlines good and poor practices mainly in the Debt Capital Markets and Mergers & Acquisitions departments of small to medium investment firms and is aimed at all FCA-regulated firms to assist them in considering how efficient their procedures, systems and controls are. The review is aimed at senior managers as well as front office staff and all staff that make up the first, second and third lines of defense at UK firms that are FCA-regulated. Ultimate responsibility however remains with senior management and the FCA expects senior managers to be aware of their obligations and of the risks of handling confidential and inside information in an inappropriate way. The review states that all UK FCA-regulated firms should ensure that their arrangements are fit for purpose so that they meet the standards of the review, and make suitable improvements where necessary. These arrangements should be consistently reviewed from both a market abuse and conduct of business

viewpoint, taking into account any new risks that may arise due to external factors such as market practices or macroeconomic issues.

The review is available at: <http://www.fca.org.uk/static/fca/documents/thematic-reviews/tr-15-13.pdf>.

Consumer Protection

UK Regulator Still Concerned About Suitability of Retail Investment Portfolios

On December 9, 2015, the FCA published a report on the outcomes of its thematic review of the suitability of retail investment portfolios provided by wealth management and private banking firms. The aim of the review was to assess whether the relevant firms had taken steps to address concerns that had been highlighted to them during previous thematic reviews. The FCA review concluded that: (i) some firms have taken steps to improve and demonstrate the suitability of customer investment portfolios; (ii) firms still need to make substantial improvements in gathering, recording and regularly updating customer information; (iii) firms need to take steps to ensure that the composition of the portfolios they manage reflect the investment needs and risk appetites of their customers, in particular those customers with a limited capacity for capital loss or that do not want to be exposed to such risks; and (iv) firms must ensure that their governance, monitoring and assessment frameworks meet the regulatory requirements on suitability. The FCA expects firms, in particular senior managers, to assess their own processes and practices and to take any necessary action.

The report is available at: <http://www.fca.org.uk/static/documents/tr15-12.pdf>.

Cyber Security

US Financial Crimes Enforcement Network Director Speech on Financial Intelligence Data and Cyber Threats

On December 9, 2015, the Director of FinCEN, Jennifer Shasky Calvery, delivered a speech regarding FinCEN's efforts to gather financial intelligence data and mitigate cyber threats. Director Calvery discussed methods by which FinCEN gathers data through its Bank Secrecy Act reporting stream and then uses such data to combat cyber threats. She also discussed FinCEN's recent analytical enhancements and efforts to work alongside foreign Financial Intelligence Units in order to identify information that could be helpful in preventing cyber incidents. Finally, she stressed the importance of information sharing among law enforcement, the private sector, government and international counterparts to recognize and cope with threats to the financial system.

The speech is available at: https://www.fincen.gov/news_room/testimony/html/20151209.html.

European Union Agency for Network and Information Security Reports on the Secure Use of Cloud Computing in the Finance Sector

On December 7, 2015, the European Union Agency for Network and Information Security published a report on the secure use of cloud computing in the finance sector. ENISA makes recommendations to financial institutions, national regulators as well as cloud service providers that aim to facilitate the secure adoption of cloud services in the finance sector. According to ENISA, the following are key issues that are hampering the adoption of cloud services by financial institutions: (i) financial institutions and their national regulators are unconvinced about the security benefits of cloud computing even though security is considered very important by CSPs and risk assessments have been carried out by various expert bodies, including ENISA; (ii) lack of detailed guidance on the relevance of national regulations for cloud computing; and (iii) guidance from national regulators on meeting regulatory requirements when adopting cloud computing needs to be further developed. ENISA makes several recommendations, including: (i) national regulators, financial institutions and CSPs should develop effective communication and collaboration to assist the cloud market to evolve quicker; (ii) financial institutions should develop a cloud computing strategy, adopting a risk-based approach to moving to the cloud; (iii) CSPs should work to increase the level of transparency about cloud offerings for financial

institutions and their regulators; and (iv) the European Commission, European Agencies and industry bodies should work together to improve the understanding of cloud computing.

The report is available at: <https://www.enisa.europa.eu/activities/Resilience-and-CIIP/cloud-computing/cloud-in-finance>.

Derivatives

First EU Clearing Obligation to Apply from June 2016

On December 1, 2015, a Delegated Regulation which gives effect to the EU clearing obligation for Interest Rate Swaps was published in the Official Journal of the European Union. Under the Delegated Regulation, fixed-to-float IRS, known as plain vanilla IRS derivatives, float-to-float swaps, known as basis swaps, forward rate agreements and overnight index swaps denominated in euro, pounds sterling, Japanese yen or US dollars and entered into with an EU counterparty must be cleared through a CCP. The obligation will be phased in according to counterparty type to allow market participants time to determine if the obligation applies to them and set up procedures to ensure compliance:

(i) from June 21, 2016: clearing members for at least one of the relevant classes of IRS of at least one CCP authorized or recognized to clear one of those classes; (ii) December 21, 2016: FCs and alternative investment funds belonging to a group whose group aggregate month-end average of outstanding notional amount of non-centrally cleared derivatives for the three months following the Delegated Regulation entering into force is above €8 billion; (iii) from June 21, 2017: FCs and AIFs not in either category (i) or (ii) above; and (iv) from December 21, 2018: NFCs subject to the clearing obligation that are not in any of the above categories. We will be publishing an updated client note to take into account this development shortly. You may wish to read our previous client note which is available [here](#).

The Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.314.01.0013.01.ENG&toc=OJ:L:2015:314:TOC.

European Securities and Markets Authority Consults on Revised Standards for Data Access under EMIR

On December 11, 2015, ESMA launched a consultation on revised RTS on data access and operational standards for comparison and aggregation of data under EMIR. ESMA is proposing to revise the existing RTS to take into account both practical developments and international developments. It will also address certain structural deficiencies in data access which have resulted in an inability of regulators to perform adequate systemic risk assessments. Particular targets of concern are low quality data, limited capabilities for data querying and for access to large datasets, difficulties in aggregating and comparing data across trade repositories due to lack of standardization and difficulties in obtaining real direct and immediate access to trade repository data. ESMA is therefore proposing: (i) common provisions for operational standards for aggregation and comparison of data; (ii) common output formats; and (iii) common provisions for operational standards for access to data and data exchange procedures between trade repositories and national regulators. The consultation closes on February 1, 2016.

The consultation paper is available at: <https://www.esma.europa.eu/press-news/consultations/consultation-paper-access-aggregation-and-comparison-tr-data>.

Enforcement

European Commission Closes Antitrust Proceedings against 13 Banks

On December 4, 2015, the European Commission issued a press release announcing that it has closed antitrust proceedings against all 13 investment banks it was investigating for their alleged involvement in anti-competitive behavior in the Credit Default Swaps market. The 13 banks in question are Bank of America Merrill Lynch, Barclays, Bear Stearns, BNP Paribas, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Morgan Stanley, Royal Bank of Scotland and UBS. The Commission alleged that the banks, together with Markit and the

International Swaps and Derivatives Association, collectively blocked Deutsche Börse and the Chicago Mercantile Exchange from entering the CDS market to protect their revenues from OTC trading. According to the Commission's preliminary findings, the banks instructed Markit and ISDA to license Deutsche Börse and CME only for OTC trading of CDS and not for exchange trading. The Commission concluded that the evidence collected from the parties, as well as additional documents obtained through further fact-finding and a hearing that took place in May 2014, was not sufficiently conclusive to confirm its concerns. The closure of the proceedings against the banks does not impact the Commission's antitrust investigations in relation to Markit and ISDA, which are still on-going.

The press release is available at: http://europa.eu/rapid/press-release_MEX-15-6254_en.htm.

Financial Market Infrastructure

US Office of the Comptroller of the Currency Issues Updated Guidance Regarding Risk Assessment System

On December 3, 2015, the US Office of the Comptroller of the Currency issued updated guidance regarding its risk assessment system. Specifically, the updated guidance (i) clarifies the relationship between the RAS and CAMELS examination ratings; (ii) revises the definition of banking risk in order to apply across all risk categories, and broadens the concept of risk to include potential impacts from losses, reduced earnings, and market value of equity; (iii) expands the "quality of risk management" assessment to include a new category of "insufficient" between satisfactory and weak in order to better categorize and communicate concerns; and (iv) expands the assessment of strategic and reputation risks to include both quantity of risk and quality of risk management.

The OCC press release discussing the updated guidance is available at: <http://www OCC.gov/news-issuances/bulletins/2015/bulletin-2015-48.html>.

US Federal Deposit Insurance Corporation Chairman, US Comptroller of the Currency and US Consumer Financial Protection Bureau Director Deliver Remarks to US House of Representatives Financial Services Committee Discussing Recent Developments by the US Financial Stability Oversight Council in Addressing Systemic Risk

On December 8, 2015, the Chairman of the FDIC, Martin J. Gruenberg, the Comptroller of the Currency, Thomas J. Curry and the Director of the Consumer Financial Protection Bureau, Richard Cordray, testified before the Committee on Financial Services in the US House of Representatives on the progress achieved by the US Financial Stability Oversight Council in fulfilling its mandate. Chairman Gruenberg, Comptroller Curry and Director Cordray discussed the actions taken by the FSOC toward (i) identifying risks to financial stability arising from entities designated as systemically important financial institutions; and (ii) identifying and addressing systemic risk in the US financial system. On the issue of SIFI designation, both Chairman Gruenberg and Comptroller Curry noted the FSOC's final rule and guidance, setting forth the formal process used by the FSOC in making such a determination. Comptroller Curry further noted the final rule and interpretive guidance issued by the FSOC for identifying and designating systemically important financial market utilities.

On the issue of identifying and addressing systemic risk, Chairman Gruenberg referenced the FSOC Annual Reports, which provide the basis for analysis of potential emerging risks to US financial stability. Chairman Gruenberg discussed specific risks identified in the FSOC Annual Reports, including (i) potential interest rate risk which could result in problems related to maturity mismatch; (ii) increase in credit risk due to easing of lending standards and other forms of increased risk taking; and (iii) the increase in emerging threats and vulnerabilities due to cybersecurity breaches.

Chairman Gruenberg's testimony is available at:

https://www.fdic.gov/news/news/speeches/spdec0815.html?source=govdelivery&utm_medium=email&utm_source=govdelivery.

Comptroller Curry's written testimony is available at: <http://www.occ.gov/news-issuances/congressional-testimony/2015/pub-test-2015-156-written.pdf>.

Director Cordray's written testimony is available at: <http://www.consumerfinance.gov/newsroom/written-testimony-of-cfpb-director-richard-cordray-before-the-house-financial-services-committee>.

European Securities and Markets Authority Consults on CCP Time Horizon for Liquidation Period

On December 14, 2015, ESMA published a consultation paper on a review of the RTS for CCPs on the time horizons for the liquidation period for margin held by CCPs for exchange-traded derivatives. The RTS currently specify a two-day time horizon as the liquidation period used in the time horizons for margin calculations, across all CCP accounts for exchange-traded products. The original RTS use this two-day liquidation period but based on net margin models, where offsetting positions of different customers cancel one another out. A key economic difference has been noted between the US and EU regimes for CCP margins, in that the US only requires a one day liquidation period but is calculated on a gross basis across all customer positions. A degree of harmonization of the two regimes is proposed to assist the EU in adopting a long-awaited equivalence decision for US CCPs under EMIR, with proposed adoption of the alternative of a "one day gross" model for European CCP customer accounts. The two-day standard for clearing members' house accounts and the five-day liquidation period for OTC products would be retained. The consultation follows on from ESMA's discussion paper published in August 2015. Comments are due by February 1, 2016.

The consultation paper is available at: <https://www.esma.europa.eu/press-news/consultations/consultation-paper-review-article-26-rti-no-1532013-respect-mpor-client>.

UK Government Consults on Implementation of Central Securities Depositories Regulation

On December 8, 2015, HM Treasury published a consultation on the implementation of the Central Securities Depositories Regulation. The CSDR introduces common standards for settlements across the EU, such as the harmonization of the rules governing central securities depositories which operate the infrastructures enabling settlement, and the timing of securities settlement in the EU. The consultation seeks views on proposed changes to domestic legislation so that provisions of domestic law which overlap with the CSDR are disapplied and changes and enforcement powers are provided for. The CSDR will apply directly across the EU from January 1, 2023 to transferable securities issued after that date and from January 1, 2025 to all transferable securities. Certain provisions will only apply from the date of entry into force of any delegated acts adopted by the Commission under the CSDR.

The consultation is available at: <https://www.gov.uk/government/consultations/consultation-on-the-implementation-of-the-central-securities-depositories-regulation-csdr/consultation-on-implementing-csdr>.

Committee on Payments and Market Infrastructures and International Organization of Securities Commissions Report on Implementation of Principles for Financial Market Infrastructures

On November 30, 2015, the Committee on Payments and Market Infrastructures and International Organization of Securities Commissions published a report on the implementation of the Principles for Financial Market Infrastructures. The Principles are the international standards for payment, clearing and settlement systems as well as trade repositories aiming to ensure that the infrastructure supporting global financial markets is resilient enough to endure financial shock. The Principles consist of five general responsibilities for the relevant national regulators for FMIs: (i) regulation, supervision and oversight of FMIs; (ii) regulatory, supervisory and oversight powers and resources; (iii) disclosure of policies relating to FMIs; (iv) application of the Principles for FMIs; and (v) cooperation with other regulators. The report covers the implementation of the Principles in 28 participating jurisdictions and states that most jurisdictions have achieved a high level of observance of the responsibilities: 16 jurisdictions fully observed all responsibilities for all FMI types and two jurisdictions either fully or broadly observed each of the five responsibilities for all FMI types. Annex 3 of the report sets out the findings for each jurisdiction.

The report is available at: <http://www.bis.org/cpmi/publ/d139.pdf>.

Financial Services

European Supervisory Authorities Publish List of Identified Financial Conglomerates

On December 1, 2015, the EBA, ESMA and European Insurance and Occupational Pensions Authority (known as the Joint Committee of the European Supervisory Authorities or the ESAs) published a list of identified Financial Conglomerates for 2015. The list indicates that: (i) 78 FCs' heads of group are located in a EU or EEA country; (ii) one FC head of group is located in Australia; (iii) one FC head of group is located in Switzerland; and (iv) two FCs' heads of group are located in the United States. The list is updated and published annually by the ESAs and shows figures as at 31 December 2014.

The list is available at:

http://www.eba.europa.eu/documents/10180/1294818/JC+2015+079+%282015+list+of+identified+Financial+Conglomerates%29_Final.pdf.

European Supervisory Authorities Publish Discussion Paper on Automation in Financial Advice

On December 4, 2015, the ESAs published a discussion paper on automation in financial advice. The paper addresses the various ways in which consumers can use automated tools, mainly websites, without human intervention to receive financial guidance. The discussion paper aims to assess what regulatory or supervisory action may be required to mitigate the risks associated with automation whilst still being able to harness its potential benefits. Potential benefits of automation are a decrease in the costs of providing advice, provision of more consistent advice and potentially wider market access for consumers. However, the potential risks include consumers possibly misunderstanding advice provided to them through automated tools, consumers receiving unsuitable advice and the potential for errors in automated tools. The discussion paper seeks views on the ESAs observations on automation in financial advice across EU jurisdictions. Comments on the discussion paper are due by March 4, 2016.

The discussion paper is available at:

<http://www.eba.europa.eu/documents/10180/1299866/JC+2015+080+Discussion+Paper+on+automation+in+financial+advice.pdf>.

EBA Discussion Paper on Strong Customer Authentication and Secure Communication under the Revised Payment Services Directive

On December 8, 2015, the EBA published a discussion paper on strong customer authentication and secure communication under the revised Payment Services Directive (known as PSD2), which is expected to enter into force in January 2016 and apply from January 2018. Under PSD2, the EBA must deliver RTS on strong customer authentication and secure communication by January 2017. The aims of these standards are to enhance consumer protection, promote innovation and improve the security of payment services across the EU. The draft RTS, once developed in conjunction with the ECB, will set out: (i) the requirements for strong customer authentication; (ii) the exemptions from these requirements; (iii) measures that would protect security credentials of users; (iv) requirements for communications that are common and secure; and (v) security measures between the various types of providers in the payments sector. Comments are due by February 8, 2016.

The discussion paper is available at: <http://www.eba.europa.eu/documents/10180/1303936/EBA-DP-2015-03+%28RTS+on+SCA+and+CSC+under+PSD2%29.pdf>.

European Banking Authority Consults on Draft Technical Standards on the Separation of Payment Card Schemes and Processing Entities under the Interchange Fee Regulation

On December 8, 2015, the EBA published a consultation paper on draft RTS on the separation of payment card schemes and processing entities under the Interchange Fee Regulation, which applies from June 8, 2016 and aims to contribute to the establishment of a single market for card payments across the EU. The draft RTS seek to establish requirements for: (i) accounting processes for payment card schemes and processing entities so that annual audited information related to separated balance sheets and profit & loss accounts are produced; (ii) the separation of workspaces, where payment card schemes and processing entities are located in the same premises; (iii) the independence of senior management, management bodies and staff of payment card schemes, so that they act autonomously from the management and staff of processing entities; (iv) remuneration; (v) the use of shared services and treatment of sensitive information; and (vi) a code of conduct. Comments are due by March 8, 2016.

The consultation paper is available at: <http://www.eba.europa.eu/documents/10180/1303831/EBA-CP-2015-24+%28CP+on+RTS+on+separation+under+IFR+%29.pdf>.

European Banking Authority Consults on Draft Regulatory Technical Standards on Information Sharing Between National Regulators under Revised Payment Services Directive

On December 11, 2015, the EBA published a consultation paper on draft RTS on the framework for cooperation and exchange of information between national regulators for passporting under the PSD2. The aims of PSD2, which focuses on electronic payments and payment services within the EU, include making payments between Member States as secure, easy and efficient as those made within a Member State, regulating new types of payment services and payment services providers which are currently unregulated and stimulating competition in the electronic payments market. The RTS aim to ensure that: (i) information about those entities that carry out business in EU Member States is exchanged between national regulators in a consistent way; (ii) there is clarity for payment institutions about their regulatory requirements; and (iii) the information that is to be shared between national regulators is specified. Comments are due by March 11, 2016.

The consultation paper is available at: <http://www.eba.europa.eu/documents/10180/1306972/EBA+CP+2015+25+%28CP+on+RTS+on+Passporting+Notifications%29.pdf>.

UK Government Publish Policy Paper on Boosting Competition in the UK

On November 30, 2015, HM Treasury published a policy paper on boosting competition in the UK which, amongst other things, states that the UK government aims to boost competition with the establishment of a New Bank Start-Up Unit which will make it easier for new banks to enter the market. The new unit will be launched by the PRA and FCA on January 20, 2016 and will provide firms with named case officers at both regulators that will be able to assist new banks wishing to enter the market and through the early stages of authorization.

The policy paper is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480797/a_better_deal_for_families_and_firms_print.pdf.

Payment Systems Regulator Consultation on European Interchange Fee Regulation

On December 2, 2015, the Payment Systems Regulator published a consultation paper on the application of the Interchange Fee Regulation in the UK. The European Regulation which was published in the Official Journal of the European Union on May 19, 2015 is directly applicable in the UK. The Regulation introduces caps on interchange fees on debit and credit card transactions where the issuer and acquirer are both located in the EEA. The consultation, which will be conducted in two phases, seeks views on how the monitoring of compliance with the IFR provisions should be approached. The PSR has therefore published draft guidance alongside the consultation paper, setting out the proposed

approach to the provisions of the IFR that come into force on December 9, 2015. The second phase of the consultation will follow in due course and will cover the remaining provisions that come into force on June 9, 2016. Comments on the consultation paper are due by January 29, 2016.

The consultation paper and draft guidelines are available at:

<https://www.psr.org.uk/sites/default/files/media/PDF/CP%2015.3%20-%20Application%20of%20IFR%20in%20UK.pdf> and
https://www.psr.org.uk/sites/default/files/media/PDF/GC%2015.2%20-%20Guidance%20on%20PSR%E2%80%99s%20approach%20to%20IFR_0.pdf.

UK Payment Systems Regulator Press Release on Card Schemes Subject to Domestic Interchange Fee Caps

On December 8, 2015, the UK PSR issued a press release on the provisional determination of card schemes that are subject to domestic interchange fee caps in the UK under the EU Regulation on Interchange Fees for Card-Based Payment Transactions. The IFR introduces caps on interchange fees for debit and credit card transactions where the issuer and acquirer are both located in the EEA. The caps became applicable on December 9, 2015. The IFR applies to the following payment card schemes: MasterCard, Visa Europe, American Express, Diners Club International, JCB International and Union Pay International. Following the responses to the PSR's information request published in November 2015 on the value of UK domestic debit and credit card transactions, and the possibility of American Express potentially qualifying for an exemption from the interchange fee caps on domestic transactions, the PSR's provisional conclusion is that the market share of American Express is above the 3% threshold and American Express and any payment service providers participating in the American Express Scheme must comply with the interchange fee caps for UK domestic transactions. The PSR will issue its final guidance as well as an announcement to specify the schemes that will be exempt from the domestic interchange fee caps for the period to 31 March 2016 at an unspecified later date.

The press release is available at: <https://www.psr.org.uk/psr-publications/news-announcements/provisional-determination-card-schemes-subject-to-cap-Dec-2015>.

Financial Action Task Force Report on Money Laundering through Physical Transportation of Cash

On November 30, 2015, the Financial Action Task Force published a report on money laundering through physical transportation of cash. The report, dated October 2015, analyzes input received from over 60 countries which identifies methods used by criminals to transport funds across borders. The report sets out real examples illustrating such methods and identifies the challenges that national law enforcement entities face to discover money laundering via the physical transportation of cash.

The report is available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/money-laundering-through-transportation-cash.pdf>.

Funds

International Organization of Securities Commissions Report on Hedge Funds

On December 11, 2015, IOSCO published its third survey on hedge funds. The survey gathers information received from hedge fund managers on trading activities, leverage, funding and the hedge fund market generally, capturing data from around 1,500 funds. The findings of the survey include that: (i) the hedge fund industry is mainly based in the US, is largely US dollar based and principally invested in North American assets; (ii) hedge funds across all jurisdictions with the exception of Japan use financial leverage; and (iii) a large proportion of direct investments are made by institutional investors and the remaining share is led by funds of funds. The survey also states that assets that are managed by hedge funds appear to be growing at a rate of 34% since the last survey was published in 2013 and that the Cayman Islands hold a larger number of new funds and remain the tax domicile of choice. The hedge fund survey

assembles data from regulatory returns on hedge fund activities and aims to facilitate IOSCO to gain insight into the global hedge fund industry, encourage global cooperation on the risks arising in the hedge fund sector, creating a forum for the consideration of any potential regulatory requirements where necessary. The study is the only such exercise that is carried out on a global level.

The report is available at: <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD515.pdf>.

MiFID II

European Securities and Markets Authority Final Report on Guidelines for Complex Debt Instruments and Structured Deposits

On November 30, 2015, ESMA published a final report setting out Guidelines for complex debt instruments and structured deposits under the Markets in Financial Instruments Directive II. MiFID II allows investment firms, under certain circumstances only, to provide clients with investment services that consist of execution, reception and transmission of orders only (known as execution-only orders), without the investment firm having to obtain any relevant client information to assess whether the service or product provided is appropriate for a particular client. Such products must be non-complex and ESMA has developed Guidelines to identify the complex products for which execution-only services may not be provided. The Guidelines appear in Annex V of the report and set out a non-exhaustive list of examples of such products. The final report also includes feedback received by ESMA on its earlier consultation launched in March 2015. The Guidelines will be translated into all official languages of the EU and national regulators will have two months from the date of publication of the translated versions to notify ESMA whether or not they comply with the Guidelines. The Guidelines will apply from January 3, 2017.

The Guidelines are available at: [https://www.esma.europa.eu/system/files_force/library/2015-1783 -
_final_report_on_complex_debt_instruments_and_structured_deposits.pdf?download=1](https://www.esma.europa.eu/system/files_force/library/2015-1783_-_final_report_on_complex_debt_instruments_and_structured_deposits.pdf?download=1).

European Securities and Markets Authority Publishes Further Technical Standards under MiFID II

On December 11, 2015, ESMA published further final draft ITS due under MiFID II. The ITS cover: (i) cooperation arrangements between national regulators for supervision of a trading venue of substantial importance in a host and home Member State; (ii) the format and timing of the communications and the publication of the suspension and removal of financial instruments from trading on a regulated market, a multilateral trading facility or an organized trading facility; (iii) notification or provision of information for application for authorization of data reporting service providers; (iv) the format of the reports of position reports by position holders; (v) format and timing of weekly position reports; (vi) cooperation between national regulators in supervisory activities, on-site verifications, investigations and for the exchange of information; (vii) consultation of other national regulators prior to granting an authorization for certain types of investment firms; and (viii) submission of information on sanctions and measures. The final draft ITS have been sent to the European Commission for endorsement.

The final draft ITS are available at <https://www.esma.europa.eu/press-news/esma-news/esma-issues-standards-reporting-cooperation-suspensions-under-mifid-ii>.

Recovery & Resolution

European Banking Authority Compares Recovery Plans across the EU

On December 8, 2015, the EBA published a comparative report on recovery plan scenarios used by firms across the EU. The EBA aims to provide national regulators and firms with an overview of developments in recovery plan scenarios as well as identify best practices and areas where improvement is needed. Under the EU Bank Recovery and Resolution Directive, banks must prepare recovery plans which include a range of scenarios of severe macroeconomic and financial stress relevant to a bank's specific conditions. The recovery plan must be assessed and approved by a bank's relevant

national regulator. The EBA's analysis is that while some banks' recovery plans comply with the requirements of the BRRD and the secondary legislation and guidelines, others do not. The EBA identifies key areas for improvement, including: (i) recovery plans should make clear the relevance of each scenario to the individual bank; (ii) the scenario and its impacts need to be explained so that the severity of the scenario is clear; (iii) the recovery plans should depict events as a sequence, not as point-in-time, so that a complete assessment of the recovery capacity of a firm can be made; and (iv) the link between a scenario and its indicators and options must be apparent so that an assessment of the adequacy of the framework of indicators and the recovery capacity is possible.

The report is available at:

<http://www.eba.europa.eu/documents/10180/950548/Report+on+benchmarking+scenarios+in+recovery+plans.pdf>.

European Commission Requests Ten Countries to Implement EU Deposit Guarantee Schemes Directive

On December 10, 2015, the European Commission announced that it had formally requested 10 EU countries to fully implement the EU Deposit Guarantee Schemes Directive which was due to be implemented into national law by July 3, 2015. The countries—Belgium, Cyprus, Estonia, Greece, Italy, Luxembourg, Poland, Romania, Slovenia and Sweden—must implement the DGSD within two months. If any of these countries fails to do so, the Commission may refer them to the Court of Justice of the EU. In October, the European Commission referred the Czech Republic, Luxembourg, the Netherlands, Poland, Romania and Sweden to the Court of Justice of the EU for failing to transpose the Bank Recovery and Resolution Directive into national legislation in time.

The press release is available at: http://europa.eu/rapid/press-release_IP-15-6253_en.htm.

Bank of England Consults on Minimum Requirement for Own Funds and Eligible Liabilities

On December 11, 2015, the BoE published proposals on its approach to setting a Minimum Requirement for own funds and Eligible Liabilities (known as MREL). This is the equivalent of the US Total Loss Absorbing Capacity (known as TLAC) rule. Under the BRRD and related UK legislation, the BoE is responsible for directing relevant firms to maintain MREL. MREL is a minimum requirement for firms to maintain equity and eligible debt liabilities that can bear losses before and in resolution and results in a top up to standard regulatory capital requirements, similar in concept to the old Tier 3 requirements under Basel II. The requirement will apply to UK authorized banks, building societies and PRA-designated investment firms, parent undertakings of those firms that are financial holding companies and to UK authorized subsidiaries of such firms. The BoE will set an individual MREL for each firm. It intends to follow the EBA's final draft RTS which require it to set an amount for loss absorption prior to and in resolution and an amount for recapitalization, tailored according to the resolution strategy set for each firm. The BoE intends to use the transitional provisions available under the BRRD. For most firms this means that the BoE will set consolidated MREL at no higher than a firm's current regulatory minimum capital requirements, starting in 2016 with a final conformance date of January 1, 2020. For UK Global Systemically Important Banks, the BoE will apply the FSB's TLAC requirement. UK G-SIBs will therefore need to meet a minimum TLAC/MREL requirement, on a consolidated basis, of 16% of risk-weighted assets or 6% of leverage exposures by January 1, 2019. The proposals should be read in conjunction with the PRA's proposed approach to setting regulatory buffers in view of MREL. Responses to the BoE's consultation are due by March 11, 2016.

The BoE's consultation paper is available at:

<http://www.bankofengland.co.uk/financialstability/Documents/resolution/mrelconsultation2015.pdf>.

The EBA's final draft RTS are available at: <https://www.eba.europa.eu/documents/10180/1132900/EBA-RTS-2015-05+RTS+on+MREL+Criteria.pdf>.

The FSB's TLAC term sheet is available at: <http://www.financialstabilityboard.org/wp-content/uploads/TLAC-Principles-and-Term-Sheet-for-publication-final.pdf>.

The PRA's consultation paper is available at:

<http://www.bankofengland.co.uk/pr/Documents/publications/cp/2015/cp4415.pdf>.

UK Prudential Regulation Authority Consults on Relationship between Regulatory Buffers and MREL

On December 11, 2015, the PRA published its proposed approach setting regulatory buffers in light of a firm's MREL requirement as well as the relationship between MREL and the PRA's Threshold Conditions which are a set of minimum requirements that authorized firms must meet in order to continue carrying out their regulated activities. MREL is the equivalent of the US TLAC rule. The proposals are relevant to PRA-regulated banks, building societies and PRA-designated investment firms. The PRA's proposed approach is to prohibit firms from being able to double-count common equity Tier 1 capital towards MREL and to risk-weighted capital and leverage buffers. Some guidance has been given on enforcement: when a firm is in breach of its MREL requirements, the PRA may investigate whether that firm is failing or likely to fail to meet the Threshold Conditions, although investigation will not be automatic. The PRA's approach is in line with the FSB's TLAC standards. The proposals should be read in conjunction with the BoE's consultation on setting MREL. Responses to the PRA's consultation are due by March 11, 2016.

The PRA's consultation paper is available at:

<http://www.bankofengland.co.uk/pr/Documents/publications/cp/2015/cp4415.pdf>.

The BoE's consultation paper is available at:

<http://www.bankofengland.co.uk/financialstability/Documents/resolution/mrelconsultation2015.pdf>.

The FSB's TLAC term sheet is available at: <http://www.financialstabilityboard.org/wp-content/uploads/TLAC-Principles-and-Term-Sheet-for-publication-final.pdf>.

UK Regulator Confirms Scope for Consultation on Ensuring Operational Continuity in Resolution

On December 11, 2015, the PRA published an addendum to its October 2015 consultation paper proposing the creation of a new framework that would require firms to ensure operational continuity of shared services that are considered critical to the economy in the event of failure of a firm, recovery action, resolution or post-resolution restructuring. The PRA released its initial proposals in October 2015, stating that the exact scope of firms that would be subject to the proposed rules would be set once the BoE had completed its calibration work for setting MREL, which is the European equivalent of total loss-absorbing capacity or TLAC. The BoE published its MREL proposals on December 11, 2015. The PRA proposes that banks, investment firms and building societies meeting the following criteria on January 1 of any year, would be subject to the new rules on operational continuity: (i) the firm's total assets averaged over the previous 36 months exceeds £10 billion; (ii) the total value of safe custody assets the firm holds averaged over the previous 36 months exceeds £10 billion; or (iii) the total value of sight deposits (i.e. able to be withdrawn immediately, without notice) the firm holds averaged over the previous 36 months exceeds £350 million. The consultation closes on March 11, 2016. The PRA intends to publish its Policy Statement, final rules and supervisory rules in mid-2016. The new rules would apply from January 1, 2019.

The October consultation and Addendum consultation papers are available at:

<http://www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp3815.aspx>.

Bank of England Confirms Approach to Exercising its Power to Direct Firms to Address Impediments to Resolvability

On December 11, 2015, the BoE published its Statement of Policy and feedback to its consultation on its proposed approach to exercising its power to direct firms to address impediments to resolvability. As the UK resolution authority, the BoE must, in preparing the resolution plan for a firm, assess the resolvability of a firm. If any substantive impediments are identified during that assessment or otherwise, the BoE has the power to require the firm to remove any such obstacle, including requiring the amendment of a group financial support agreement, the disposal of certain assets or a change to its legal or operational structure. The BoE's power of direction applies to UK incorporated and

authorized banks, building societies and PRA-designated investment firms, any UK incorporated parents of those firms that are financial holding companies and to UK incorporated and authorized subsidiaries of such firms. The final Statement of Policy sets out the BoE's approach to and process for using the power of direction and includes illustrative examples of scenarios in which the BoE may consider exercising its power of direction.

The Statement of Policy and responses to the consultation are available at:

<http://www.bankofengland.co.uk/financialstability/Documents/resolution/barriersresolvabilitydec15.pdf>.

Shadow Banking

US Board of Governors of the Federal Reserve System Vice Chairman Delivers Speech Regarding Financial Stability and Shadow Banks

On December 3, 2015, US Federal Reserve Board Vice Chairman, Stanley Fischer, delivered remarks on "Financial Stability: Policy Analysis and Data Needs" at the 2015 Financial Stability Conference sponsored by the Federal Reserve Bank of Cleveland and the Office of Financial Research. In his speech, Mr. Fischer discussed vulnerabilities of the US financial system and risks posed by shadow banking. While he praised steps taken by banking regulators to strengthen financial stability generally, including requirements for more and higher-quality capital and other loss-absorbing capacity for banks, liquidity buffers and stress testing for banks, new margin requirements for uncleared derivatives transactions, mandated clearing of certain derivatives to CCPs and the designation of systemically important nonbank financial institutions, Mr. Fischer still believes that regulators' views of developments in the shadow banking sector remain incomplete. Mr. Fischer noted that the lack of data available regarding nonbank financial institutions can impair the development of regulations in this sector and thereby pose a threat to the financial system. He calls for policymakers to improve data collection efforts and focus on modeling interconnectedness between shadow banking, banks and the larger financial system in order to better understand the interdependencies between the banking system and nonbank financial institutions. One specific example he gave was regarding the potential role of margin in securities financing transactions. He noted that more stringent regulation of banking organizations may push securities financing transactions to less regulated entities and that to limit such arbitrage, the Federal Reserve would be developing regulations that establish minimum margin requirements for securities financing transactions for all market participants.

Mr. Fischer's speech is available at: <http://www.federalreserve.gov/newsevents/speech/fischer20151203a.htm>.

People

European Supervisory Authorities' Term of Office for Chair and Executive Directors Extended

On December 1, 2015, the European Parliament issued a press release announcing an extension to the terms of office for the current Chairpersons of the three ESAs. Mr. Andrea Enria will enter his second term as Chair of the EBA, as will Mr. Stephen Maijoor as Chair for ESMA and Mr. Gabriel Bernardino as Chair for EIOPA. All three terms have been extended by five years. The terms of office for the current ESAs' executive directors Mr. Adam Farkas and Ms. Verena Ross have also been extended.

The press release is available at:

http://www.europarl.europa.eu/pdfs/news/expert/infopress/20151201IPR05532/20151201IPR05532_en.pdf.

European Banking Authority Appoints Members of Management Board and Alternate Chairperson

On December 10, 2015, the Board of Supervisors of the EBA elected its Alternate Chairperson and members of its Management Board. Mr. Pedro Duarte Neves has been elected Alternate Chairperson of the EBA Board of Supervisors and Mr. Andrzej Reich has been elected Management Board member. Both were re-elected for a second term.

Mr. Édouard Fernández-Bollo and Mr. David Rozumek have been elected as new members of the EBA Management Board.

The press release is available at: <http://www.eba.europa.eu/-/eba-appoints-its-alternate-chairperson-and-management-board-members>.

European Securities and Markets Authority Appoints New Chair of Market Integrity Standing Committee

On December 14, 2015, ESMA appointed Giuseppe Vegas as chair of its Market Integrity Standing Committee for a period of two years, starting on December 10, 2015.

The press release is available at: <https://www.esma.europa.eu/press-news/esma-news/esma-appoints-new-chair-market-integrity-standing-committee>.

Upcoming Events

December 16, 2015: The US CFTC will hold an open meeting to consider a final rule regarding margin for uncleared swaps.

December 16, 2015: The US House Financial Services Oversight and Investigations Subcommittee will hold a hearing to examine the CFPB's Mass Data Collection Program.

December 17, 2015: The US FSOC meeting including discussion of annual re-evaluation of nonbank financial companies designated by FSOC as systemically significant.

December 18, 2015: EBA Public Hearing on Draft RTS on Cross-Border Intragroup Liquidity Flows (registration closed).

January 5, 2016: EBA Public Hearing on Draft Guidelines on Communication between National Regulators Supervising Credit Institutions and their Auditors (registration closed).

January 13, 2016: EBA Public Hearing on Disclosure of Confidential Information in Summary or Collective Form under the BRRD (registration closes: December 23, 2015).

January 18, 2016: EBA Public Hearing on Common Procedures for Information Exchange between National Regulators on Proposed Acquisitions and Increases of Qualifying Holdings (registration closes: January 4, 2016).

January 25, 2016: ESMA Open Hearing on Validation and Review of Credit Rating Agency Methodologies (registration closes: January 26, 2016).

February 16, 2016: EBA Open Hearing on Guidelines on the collection of information for the ICAAP and ILAAP (registration closes: January 26, 2016).

Upcoming Consultation Deadlines

December 16, 2015: ECB Consultation on use of Options and Discretions under CRD IV.

December 17, 2015: HM Treasury Consultation on Legislative Amendments to Implement Undertakings for Collective Investments in Transferable Securities Directive V.

December 18, 2015: FCA Asset Management Market Study.

December 22, 2015: FCA and HM Treasury Consultation on Public Financial Guidance.

December 22, 2015: FCA and HM Treasury Call for Input on Improving Access to Financial Advice for Consumers.

December 24, 2015: ESMA Consultation on RTS for the European Single Electronic Format under the Transparency Directive.

December 27, 2015: ESMA Consultation on Indirect Clearing under EMIR and Markets in Financial Instruments Regulation.

December 28, 2015: FDIC FAQs on Brokered Deposits.

January 6, 2016: European Commission Consultation on EU Covered Bond Framework.

January 6, 2016: European Commission Consultation on EU Venture Capital Investment Funds Regulation and European Social Entrepreneurships Funds Regulation.

January 13, 2016: EBA Consultation on Draft RTS on Cross Border Intragroup Liquidity Flows.

January 14, 2016: European Commission Consultation on Impact of Maximum Remuneration Ratio between Variable to Fixed Remuneration and Overall Efficiency of Remuneration Rules.

January 15, 2016: PRA Consultation on Implementation of Ring Fencing for Core UK Financial Services and Activities.

January 18, 2016: PRA Consultation on Identifying Other Systemically Important Institutions.

January 22, 2016: EBA Consultation on Draft Guidelines on Application of Definition of Default under the CRR.

January 22, 2016: ESAs Consultation on Anti Money Laundering Guidelines.

January 27, 2016: EBA Consultation on Draft Guidelines for Disclosure of Confidential Information under the BRRD.

January 28, 2016: EBA Consultation on Draft Guidelines on Treatment of Credit Valuation Adjustment Risk under the Supervisory Review and Evaluation Process.

February 1, 2016: Federal Reserve Board TLAC and Related Requirements Proposal.

February 1, 2016: ESMA Consultation on Revised RTS on data access and operational standards for comparison and aggregation of data.

February 1, 2016: ESMA Consultation on CCP Time Horizon for Liquidation Period.

February 4, 2016: FCA Consultation on Implementation of Market Abuse Regulation.

February 5, 2016: Basel Committee Consultation on Capital Requirements for Simple, Transparent and Comparable Securitizations.

February 8, 2016: EBA Discussion Paper on RTS for Strong Customer Authentication and Secure Communication under the Revised Payment Services Directive.

February 10, 2016: EBA Consultation on Common Procedures for Information Exchange between National Regulators on Proposed Acquisitions.

February 12, 2016: Basel Committee Consultation on TLAC Holdings.

February 19, 2016: ESMA Discussion Paper on Validation and Review of CRA Methodologies.

February 20, 2016: FCA Consultation on Amending Guidance on Delaying Disclosure of Inside Information.

February 23, 2016: CPMI and IOSCO Consultation on Cyber Resilience.

March 4, 2016: ESAs Discussion Paper on Automation in Financial Advice.

March 8, 2016: EBA Consultation on draft RTS on Separation of Payment Card Schemes and Processing Entities under the Interchange Fee Regulation.

March 8, 2015: EBA Consultation on Draft ITS Amending Regulation on Supervisory Reporting of Institutions and FINREP.

March 11, 2016: EBA Consultation on Guidelines on the Collection of Information for the ICAAP and ILAAP.

March 11, 2016: EBA Consultation on Draft RTS on Information Sharing Between National Regulators under PSD2.

March 11, 2016: BoE Consultation on its Approach to Setting MREL.

March 11, 2016: PRA Consultation on MREL – Buffers and Threshold Conditions.

March 11, 2016: PRA Consultation on Ensuring Operational Continuity in Resolution.

March 11, 2016: Basel Committee Consultation on Revised Standardized Approach to Credit Risk.

February 1, 2016: ESMA Consultation on CCP Time Horizon for Liquidation Period.

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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