SHEARMAN & STERLING LLP

FINANCIAL INSTITUTIONS ADVISORY & FINANCIAL REGULATORY GROUP
NEWSLETTER

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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.

Click here if you wish to access our Financial Regulatory Developments website.

Click here if you wish to read our quarterly European Governance & Securities Law Focus newsletter.

In this Issue (please click on any title to go directly to the corresponding discussion):

Bank Prudential Regulation & Regulatory Capital

US Federal Banking Agencies Issue Interim Final Rules Allowing More Banks and Savings Associations to Qualify for 18-Month Examination Cycle

On February 19, 2016, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency jointly issued interim final rules that will allow certain well-capitalized and well-managed insured depository institutions with less than $1 billion in total assets to qualify for an 18-month examination cycle, rather than a 12-month cycle. Institutions are considered to be well-capitalized and well-managed if they have a composite examination rating of 1 or 2—the top ratings in the five-point scale indicating the safety and soundness of a bank or savings association.

The rules are estimated to increase the number of institutions that may qualify for an 18-month examination cycle by approximately 617, to nearly 5,000 insured depository institutions. In addition, the rules increase the number of US branches and agencies of foreign banks that may qualify for an 18-month examination cycle by 26 branches and agencies, to a total of 89. The changes are intended to reduce regulatory compliance costs for smaller institutions, while still maintaining safety and soundness protections. Comments to the rules will be accepted for 60 days from publication in the Federal Register.

The interim final rules and request for comments is available at:
http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160219a1.pdf.

US Federal Reserve Board Notifies Firms of Enhancements to Federal Reserve Models Used to Estimate Operational Risk and Capital

On February 17, 2016, the Federal Reserve Board sent a letter to firms participating in the upcoming Dodd-Frank Act Stress Test (DFAST) and Comprehensive Capital Analysis Review (CCAR) notifying them of certain enhancements to aspects of its operational risk and capital models. Among the enhancements to operational risk models are losses from expenses related to put-back mortgages, as well as potential costs form unfavorable litigation outcomes. For DFAST 2016, the Federal Reserve Board notes that it will use historically-based loss projections (with two new modifications) using an average of two models, while dropping the loss distribution approach. Changes to capital models include incorporating greater precision in the adjustments to the regulatory capital ratio denominators, as well as modifying assumptions regarding the relationship between mortgage servicing assets and associated deferred tax liabilities.

The letter is available at: http://www.federalreserve.gov/bankinforeg/model-changes-20160217.pdf.

Federal Reserve Bank of Minneapolis President Delivers Speech Arguing that Banks are Still Too Big to Fail

On February 16, 2016, in a speech at the Brookings Institution in Washington, DC, Federal Reserve Bank of Minneapolis President Neel Kashkari argued that banks are still too big to fail and remain a significant, ongoing risk to the US economy. Kashkari noted that the Dodd-Frank Act did not go far enough and that regulators should consider breaking up large banks into smaller entities, turning them into public utilities by forcing them to hold higher levels of capital (as high as 25% of total assets), and taxing leverage throughout the financial system. According to Kashkari, the Minneapolis Fed will launch an initiative to consider transformational options through policy symposiums and policy briefs and create an actionable plan to end too big to fail that will be released by year-end for consideration by legislators, policymakers, and the public.

Kashkari's predecessor at the Minneapolis Fed, Narayana Kocherlakota, responded to Kashkari's proposals, noting that such measures, particularly imposing higher capital standards, would have "adverse macroeconomic consequences."

Kashkari's speech is available at https://www.minneapolisfed.org/news-and-events/presidents-speeches/lessons-from-the-crisis-ending-too-big-to-fail.

Kocherlakota's response is available at: https://sites.google.com/site/kocherlakota009/home/policy/thoughts-on-policy/2-16-16.

EU Equivalence Decision on Recognized Third Countries for Treatment of Exposures of Banks

On February 17, 2016, a Commission Implementing Decision was published in the Official Journal of the European Union, updating the list of third countries with equivalent regulatory arrangements in relation to prudential requirements for banks and investment firms for the purpose of the treatment of exposures. The Decision lists the countries whose arrangements for supervision and regulation of banks and investment firms are deemed by the European Commission to be equivalent to the standards of the EU as set out in the Capital Requirements Regulation. The assessments reviewed the supervisory and regulatory arrangements in each country for: (i) banks; (ii) investment firms; and (iii) exchanges. The following nations are now equivalent across all three categories: Australia, Brazil, China, Mexico, Saudi Arabia, Singapore, South Africa and the United States. This Decision will enter into force on March 8, 2016.

The list of equivalent third countries and territories is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.041.01.0023.01.ENG&toc=OJ:L:2016:041:TOC.

EU Technical Standards Imposing Disclosure Requirements for Leverage Ratios on Financial Institutions Published

On February 15, 2016, the Commission Implementing Regulation on the disclosure of leverage ratios by financial institutions under the Capital Requirements Regulation was published in the Official Journal of the European Union. The Regulation provides that firms must disclose relevant information concerning leverage ratios in the form of an approved template. Firms will be under an obligation to disclose a breakdown of the leverage ratio total exposure measure, a reconciliation of the leverage ratio for a firm's published financial statements and qualitative information on the risk of excessive leverage and the factors impacting the leverage ratio. The Regulation applies directly across the EU from February 16, 2016.

The Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.039.01.0005.01.ENG&toc=OJ:L:2016:039:TOC.

European Central Bank Proposes Guide for Recognition of Institutional Protection Schemes

On February 19, 2016, the European Central Bank launched a consultation on its proposed guide to the recognition of institutional protection schemes for prudential purposes. Under the Capital Requirements Regulation an IPS is a contractual or statutory liability arrangement of a group of banks which protects member institutions, in particular, by ensuring their liquidity and solvency. Certain waivers or relaxation of capital requirements are available for IPS member institutions under CRR. In particular, CRR provides that the ECB may, subject to certain exceptions, allow credit institutions to apply a 0% risk weight to exposures to other counterparties which are members of the same IPS. The ECB directly supervises the largest Eurozone banks for prudential purposes and overseas the prudential supervision by national regulators of the smaller Eurozone banks. The ECB's proposed guidelines set out how it intends to assess compliance of an IPS and its members with the requirements set out in the CRR. Responses to the consultation should be submitted by April 15, 2016. Once finalized, the final guidelines will be incorporated into the ECB Guide on options and discretions available in Union law (which is currently being finalized).

The proposed guide is available at: https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/institutional/pub_con_doc_institutional_protection.en.pdf?5f2f68175cfd4938e56e5fe520efbe4e.

The ECB's consultation webpage is available at: https://www.bankingsupervision.europa.eu/legalframework/publiccons/html/institutional_protection.en.html.

Prudential Regulation Authority Publishes Approach to Identifying Other Systematically Important Institutions

On February 19, 2016, the Prudential Regulation Authority published policy statement outlining approach to identifying other systematically important institutions (i.e. institutions that are not classed as globally systematically important financial institutions but whose failure would have a significant negative effect on the UK financial system). The PRA is required to identify O-SIIs pursuant to the Capital Requirements Directive which implements the framework for domestic systemically important institutions developed by the Basel Committee for Banking Standards. In developing approach the PRA has taken into consideration the

European Banking Authority's guidelines which set out a two stage process to identifying O-SIIs. The first stage outlines a minimum mandatory framework and the second stage provides discretion to national regulatory authorities, such as the PRA, to overlay the framework to reflect the national banking sector. The framework is to be applied to all banks, investment firms, European Economic Area parent institutions, EEA parent financial holding companies and EEA parent mixed financial holding companies established within the United Kingdom. The framework is not to be applied to branches of EEA and third-country overseas firms, investment firms which are not regulated by the PRA and firms whose total assets constitute less than 0.02% of the total assets of UK banks and investment firms. The mandatory categories to be taken into account under the EBA Guidelines to identify O-SIIs, include: size, importance, complexity and interconnectedness. The application of indicators in each category provides a numerical value used to determine whether the entity is an O-SII. The PRA has chosen to exercise its discretion, as per the second stage of the EBA Guidelines, and has used its potential impact framework to align the definition of O-SIIs broadly with that of Category 1 firms. Category 1 firms are those whose failure would have the greatest impact on the UK financial system and economy. As a result, an entity may fail to qualify as an O-SII based on its score from the mandatory framework calculation, however, the PRA may designate O-SII status if it falls within Category 1. The O-SII identification will be conducted by the PRA annually and the list of firms labelled O-SIIs will be published by December 1 of each year. The PRA will also publish the score of each firm derived using the EBA guidelines and the rationale as to why a firm has been designated as an O-SII despite failing to reach the minimum score under the EBA guidelines.

The PRA's Policy Statement is available at:
http://www.bankofengland.co.uk/pra/Documents/publications/sop/2016/approachtoosiis.pdf.

The EBA's Guidelines are available at: https://www.eba.europa.eu/documents/10180/930752/EBA-GL-2014-10+%28Guidelines+on+O-SIIs+Assessment%29.pdf.

Consumer Protection

US Consumer Financial Protection Bureau Finalizes Policy to Facilitate Consumer-Friendly Innovation

On February 18, 2016, the US Consumer Financial Protection Bureau finalized a policy, first proposed in October 2014, establishing a process for companies to apply for a no-action letter from CFPB staff that would reduce regulatory uncertainty for a new product or service that offers the potential for significant consumer-friendly innovation. This letter would indicate that CFPB staff reviewed the company's application and have no present intention to recommend enforcement or supervisory action with respect to the particular aspects of the company's product under the specifically-identified provisions and applications of statutes or regulations that are the subject of the no-action letter.

The new policy was created as part of the CFPB's Project Catalyst initiative, which was designed to encourage consumer-friendly developments in markets for consumer financial products and services. The CFPB views this initiative as an important aspect of fulfilling its mandate under the Dodd-Frank Act to provide all consumers access to fair, transparent, effective, and innovative markets. The policy also builds on a trial disclosure waiver policy issued by the CFPB in 2013, which allows financial services providers to take advantage of new technologies in designing and testing improved alternative federal consumer disclosures.

The CFTC press release is available at: http://www.consumerfinance.gov/newsroom/cfpb-finalizes-policy-to-facilitate-consumer-friendly-innovation/.

The policy is available at: http://files.consumerfinance.gov/f/201602_cfpb_no-action-letter-policy.pdf.

More information about Project Catalyst is available at: http://www.consumerfinance.gov/projectcatalyst/ and the trial disclosure waiver policy is available at: http://files.consumerfinance.gov/f/201310_cfpb_1032e-trial-disclosure-policy.pdf.

Financial Conduct Authority Publishes Review Report on Assessing Suitability

On February 19, 2016, the Financial Conduct Authority published the findings of its review into the research and due diligence processes that firms undertake on the products and services they recommend to retail clients. The FCA assessed 13 advisory firms and also visited seven external research and due diligence consultancy firms. Key findings that emerged from the review were that most firms seek to achieve positive outcomes for their clients when undertaking research and due diligence and that there is some evidence of good practice. However, many firms do not demonstrate good practice consistently across all products and services. The FCA found that a corporate culture of challenge was a key driver of good research and due diligence. Those firms that did not have a corporate culture of challenge: (i) did not try to understand or challenge their own inappropriate bias towards products, services or providers; and (ii) inadequately managed conflicts of interest. The FCA has taken steps to address the issues found, instructing three firms to improve their research and due diligence process. The FCA has also asked one firm to complete a past business review. The FCA intends to provide firms with further communications that set out its expectations in this area in greater detail. In addition, the FCA's second consultation paper on implementing the Markets in Financial Instruments Directive, due to be published later this year, will cover requirements for research on products.

The FCA's review report is available at: http://www.fca.org.uk/static/fca/article-type/thematic%20reviews/tr16-01.pdf.

UK Regulator Publishes Proposed Guidance on Enforcing Security and Default Notices under the Consumer Credit Act

On February 19, 2016 the FCA published proposed guidance on enforcing security under the Consumer Credit Act and when a default notice is required to be issued. The guidance is aimed at firms that provide consumer credit services and products. The proposed guidance invites comment on "what is enforcement" in the context of when a firm could breach the CCA. The proposed guidance relates to the requirement under the CCA to serve a default notice, following the breach of a regulated agreement, before taking certain enforcement actions. In a previous feedback statement published in September 2015, the FCA stated that a default notice was not required when taking or demanding payment from guarantors following a default because this was deemed to be enforcement of a security. This guidance provides the updated view that this statement made in the feedback statement was incorrect. The guidance provides specific circumstances where a default notice would be required in the context of guarantor loans. One such circumstance is where a creditor wishes to request or take payment from a guarantor following non-payment by a debtor. The FCA has taken the view that a creditor cannot take payment from the guarantor where it has failed to serve a valid default notice. Comments on the consultation may be submitted until March 18, 2016.

The Proposed Guidance is available at: http://www.fca.org.uk/static/documents/gc16-02.pdf.

UK Regulator Calls for Input on Retained Provisions of the Consumer Credit Act

On February 18, 2016, the FCA issued a Call for Input on the retained provisions of the CCA. Responsibility for regulating consumer credit markets was transferred to the FCA in April 2014. As part of this transfer, some of the provisions of the Consumer Credit Act 1974 were repealed and replaced by FCA rules. The FCA is now required to undertake a review on the remaining provisions in the Consumer Credit Act. The aim of the review is to simplify the regime and provide appropriate protection for consumers without burdening firms disproportionately. The FCA is seeking input on three key areas: (i) whether any specific retained provisions should be prioritized for review; (ii) the timeline of the review; and (iii) the manner in which the review should be undertaken. Responses to the Call for Input are due by May 18, 2016. The FCA is expected to establish a stakeholder's consultative group and to finalize the scope of the review in the next few months. The regulator will publish an update on progress in the fourth quarter of 2016. The FCA is required to report its recommendations to the Treasury by April 1, 2019. The report could outline legislative change and whether repealing any of the retained provisions in the CCA could have an adverse effect on the appropriate level of consumer protection. The report must also consider whether any of the retained provisions of the CCA could be replaced by FCA rules. In making the review, the FCA must have regard to the principle that a burden imposed in relation to the carrying on of an activity, should be proportionate to the benefits.

The Call for Input is available at: http://www.fca.org.uk/static/documents/call-for-input-review-retained-provisions-consumer-credit-act.pdf.

Derivatives

US Securities and Exchange Commission Adopts Final Rules Regarding Cross-Border Security-Based Swap Dealing Activity

On February 10, 2016, the US Securities and Exchange Commission adopted rules applicable to non-US firms engaging in cross-border security-based swap activities. Under the final rules, a non-US company that arranges, negotiates or executes a security-based swap transaction in connection with its dealing activity using personnel located in a US branch or office must count that transaction when determining eligibility for the *de minimis* exception to the security-based swap dealer registration requirement. A non-US firm must include such transactions in its *de minimis* threshold calculation together with security-based swap transactions connected with its dealing activity where its counterparty is a US person. Compliance with the rules is not required until the latest of either 12 months following publication in the Federal Register or the "SBS Entity Counting Date," as specified in the SEC's SBS Entity Registration adopting release.

The SEC press release is available at: http://www.sec.gov/news/pressrelease/2016-27.html.
The full text of the final rules is available at: http://www.sec.gov/rules/final/2014/34-72472.pdf.

Enforcement

UK Regulator Fines W H Ireland Limited for Market Abuse Failings

On February 22, 2016 the FCA found that W H Ireland Ltd had failed to adequately install systems and controls for the prevention of market abuse or detection. The FCA fined WHI £1.2 million and imposed a restriction preventing WHI for 72 days from taking on new clients in its corporate broking division. The restriction was imposed because WHI had failed to address issues identified in a FCA appointed Skilled Person report dated August 2013. The FCA found that WHI had failed to take precautions against market abuse during the period between January 1 and June 19, 2013. During this period WHI had approximately £2.5 billion of assets under management, around 9,000 private wealth clients and 87 corporate broking clients. WHI's failings were deemed to be in breach of Principle 3 of the FCA's Handbook as WHI had failed to take reasonable care to organise and control its affairs responsibly and failed to maintain adequate risk management systems. Some of the failings included inadequate controls to prevent inside private information from leaking into the public component of the firm, insufficient rules for employees on dealing with personal accounts and inadequate conflicts of interest policies. The range of services provided by WHI meant that it was exposed to the possibility of market abuse risks and therefore the FCA considered WHI's failings to be extremely serious. WHI's exposure was compounded as it was in regular receipt of client inside information which, if mishandled, would have had an adverse impact on the market, potentially affecting a large number of market participants. WHI benefited from a 20% Stage 2 settlement discount which reduced the fine and restriction period from £1.5 million and 90 days respectively.

The FCA's Final Notice is available at: http://www.fca.org.uk/your-fca/documents/final-notices/2016/wh-ireland.

Financial Crime

US Government Accountability Office Releases Report on Potential Illicit Uses of Remittance Transfers

On February 16, 2016, the US Government Accountability Office released a report that examines the potential illicit uses of remittances and analyzes the benefits of requiring remittance senders to provide certain types of identification at a threshold below the current $3,000 level for US anti-money laundering efforts. Among other things, the report examines: (i) BSA remittance requirements for remittance providers and related challenges that remittance providers face in complying with these requirements; (ii) money laundering risks that remittances pose; and (iii) views of relevant stakeholders' (including the Financial Crimes Enforcement Network, regulators, remittance providers, law enforcement, and industry and other associations) on the extent to which requiring remittance providers to verify identification and collect information at a lower dollar transaction amount than is currently required, or adding a requirement to verify legal immigration status, would assist US federal agencies' AML efforts.

The report is available at: http://www.gao.gov/products/GAO-16-65?utm_medium=email&utm_source=govdelivery.

Sweett Group Convicted for Failing to Prevent Bribery

On February 19, 2016, the Serious Fraud Office announced that Sweett Group Plc had been convicted and sentenced for failing to prevent bribery by an associated person under section 7 of the Bribery Act 2010. It is the first conviction of the section 7 corporate offence since the Bribery Act came into force on 2011 and it follows an investigation by the SFO into the activities of the Sweett Group in the UAE between December 1, 2012 and December 1, 2015. The investigation uncovered that Sweett Group Plc's subsidiary company, Cyril Sweett International Limited had made corrupt payments to the Vice Chairman of the Board and Chairman of the Real Estate and Investment Committee of AAAI to secure the award of a contract with AAAI for the building of the Rotana Hotel in Abu Dhabi. Sweett Group, who pleaded guilty to the charges in December 2015, were ordered to pay £2.35 million, made up of a fine of £1.4 million, £851,152 in confiscation and approximately £95,000 in costs. The amount due under the confiscation order must be paid within three months. Half the fine is due by February 19, 2017, with the remainder due in February 2018. The SFO's related investigation into individuals continues. The judgment provides guidance as to the circumstances in which a subsidiary, including a foreign subsidiary, may be considered to be an "associated person" of its parent. In this case, the Court considered that Cyril Sweett International, despite being a separate and distinct legal entity from its parent company, Sweett Group, was not independently run. The court found that the Sweett Group had treated and run Cyril Sweett International as an extension of its Middle East operations. The SFO's related investigation into individuals continues.

The SFO press release is available at: https://www.sfo.gov.uk/2016/02/19/sweett-group-plc-sentenced-and-ordered-to-pay-2-3-million-after-bribery-act-conviction/.

Financial Market Infrastructure

US Federal Reserve Board Issues Interim Final Rule Regarding Dividend Payments on Reserve Bank Capital Stock

On February 18, 2016, the Federal Reserve Board issued an interim final rule amending Regulation I to implement provisions of the Fixing America's Surface Transportation Act. The FAST Act reduced the dividend rate applicable to certain Reserve Bank depository institution stockholders that have total consolidated assets of more than $10 billion to the lesser of (i) 6 percent or (ii) the most recent 10-year Treasury auction rate prior to the dividend payment. The dividend rate for other member banks remains at 6 percent. Typically, Reserve Banks pay dividends to member banks twice each year in June and December.

The interim final rule also adjusts the treatment of accrued dividends when a Reserve Bank issues or cancels capital stock owned by a large member bank. Comments to the interim final rule will be accepted for 60 days from publication in the Federal Register.

The Federal Reserve Board press release is available at: http://www.federalreserve.gov/newsevents/press/bcreg/20160218a.htm.

The interim final rule is available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160218a1.pdf.

Financial Services

US Securities and Exchange Commission Chairwoman's Speech Notes Risk-Taking Essential to Macroeconomic Growth

On February 19, 2016, SEC Chairwoman Mary Jo White addressed the annual "SEC Speaks" program, noting the critical role capital markets play in the US economy and the importance of risk-taking as part this process. White argued that regulators should not seek to eliminate risk altogether but rather safeguard the investment and capital raising process from unacceptable risks that dilute, distort or disable the fair playing field that is integral to robust free financial markets.

The speech is available at: https://www.sec.gov/news/speech/white-speech-beyond-disclosure-at-the-sec-in-2016-021916.html.

US Federal Deposit Insurance Corporation and Securities and Exchange Commission Propose Rule Regarding Administration of Dodd-Frank Act Title II Orderly Liquidation Authority Proceeding for Broker-Dealers

On February 17, 2016, the FDIC and SEC approved the issuance of a proposed rule concerning how the agencies would administer a Dodd-Frank Act Title II orderly liquidation authority proceeding for broker-dealers. The proposed rule would: (i) clarify how the relevant provisions of Securities Investor Protection Act would be incorporated into a Title II proceeding; (ii) specify the purpose and content of the application for a protective decree required by section 205 of the SIPA; (iii) clarify the FDIC's powers as receiver with respect to the transfer of assets of a covered broker or dealer to a bridge broker or dealer; (iv) specify the roles of the FDIC as receiver and the Securities Investor Protection Corporation as trustee with respect to a covered broker or dealer; (v) describe the claims process applicable to customers and other creditors of a covered broker or dealer, including the interaction of the determination of customer claims under SIPA with the Title II claims process; (vi) provide for SIPC's administrative expenses; and (vii) provide that the treatment of qualified financial contracts of the covered broker or dealer would be governed exclusively by section 210 of the Dodd-Frank Act. The comment period is 60 days from publication in the Federal Register.

The proposed rule is available at: http://www.sec.gov/rules/proposed/2016/34-77157.pdf.

A memorandum on the issuance is available at: https://fdic.gov/news/board/2016/2016-02-17_notice_sum_a_mem.pdf.

European Securities and Markets Authority Second Peer Review Report on Money Market Fund Guidelines

In February 16, 2016, the European Securities and Markets Authority published a peer review report on the implementation by national regulators of the Committee of European Securities Regulators' Guidelines on a common definition of European Money Market Funds. The Guidelines specify a common definition of MMFs and establish a list of criteria that funds need to comply with should they wish to be categorized as a "Money Market Fund." The Guidelines aim to improve investor protection and apply both to: (i) collective investment undertakings subject to the Undertakings for the Collective Investment of Transferable Securities Directive; and (ii) non-harmonized collective investment undertakings regulated by the national laws of a Member State, which is supervised and complies with risk-spreading rules. The peer review follows the initial peer review published in April 2013 which identified that numerous regulators had at that time failed to implement the Guidelines. This second review updates the first review and covers 8 out of 30 countries which at the time of the previous review had not fully or in part implemented the guidelines. The 8 countries are Bulgaria, the Czech Republic, Hungary, Liechtenstein, Lithuania, Latvia, Malta and Portugal. The review states that the guidelines are or are about to be fully applied in all these jurisdictions apart from Hungary, where some failings have been identified.

The Guidelines are available at: https://www.esma.europa.eu/sites/default/files/library/2015/11/10-049_cesr_guidelines_mmfs_with_disclaimer.pdf.

The 2013 peer review report is available at: https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-476_-_peer_review_-_money_market_fund_guidelines.pdf.

The 2016 peer review report is available at: https://www.esma.europa.eu/file/16076/download?token=t7zvzGSD.

Recovery & Resolution

US Federal Deposit Insurance Corporation Board Approves Proposal on Deposit Account Recordkeeping Requirements to Facilitate Rapid Payment of Insured Deposits in Large Bank Failures

On February 17, 2016, the FDIC Board approved a proposal for recordkeeping requirements for FDIC-insured institutions with more than two million deposit accounts to enable rapid payment of insured deposits to customers if the institutions were to fail. The proposal would require these institutions to maintain complete and accurate data on each depositor and to ensure that their information technology systems are capable of calculating the amount of insured money for each depositor within 24 hours of a failure. The requirements would not apply to smaller institutions, including community banks.

The FDIC is required to provide customers with access to their insured accounts as soon as possible after an institution fails. While deposits are typically available by the next business day, payments from banks with a large number of deposit accounts might be delayed if the bank's records are unclear or incomplete. The FDIC will accept comments on the proposal for 90 days after it is published in the Federal Register.

The FDIC press release is available at: https://www.fdic.gov/news/news/press/2016/pr16010.html.

The notice of proposed rulemaking is available at: https://www.fdic.gov/news/board/2016/2016-02-17_notice_dis_b_fr.pdf.

A statement by FDIC Chairman Martin J. Gruenberg is available at: https://www.fdic.gov/news/news/speeches/spfeb1716.html.

Final EU Guidelines for Cooperation Agreements between Deposit Guarantee Schemes

On February 15, 2016, the European Banking Authority published its final Guidelines relating to cooperation agreements between Deposit Guarantee Schemes in accordance with the EU Deposit Schemes Directive. The Guidelines provide the minimum content for cooperation agreements between DGSs. The EBA has also provided a multilateral framework cooperation agreement in an attempt to minimize the need for numerous detailed bilateral agreements to be executed between multiple DGSs. The framework offers scope for DGSs to enter multilateral and bilateral agreements with more detailed terms than those provided for in the Guidelines, if necessary. The Guidelines stipulate minimum specifications to be included in cooperation agreements, including the means for: (i) repayment of depositors by the host DGS at branches of banks established in other Member States; (ii) the transfer of contributions from one DGS to another where a bank ceases to be a member of a DGS and joins another DGS; and (iii) mutual lending between DGSs. The EBA has attempted to cater for depositors in EU branches of firms headquartered in other Member States, so that they are treated in a similar fashion to depositors in home Member States by providing direction on the sequence and timing of events when the host DGS pays out depositors on behalf of the home DGS. The Guidelines will come into effect six months after their publication in all official EU languages.

The Guidelines are available at: http://www.eba.europa.eu/documents/10180/1370869/EBA-GL-2016-02+%28Final+report+on+GL+on+DGS+cooperation+agreements%29.pdf.

People

William C. Dudley Reappointed President of the Federal Reserve Bank of New York; Michael Strine Reappointed First Vice President

On February 19, 2016, the Federal Reserve Bank of New York announced the reappointment of William C. Dudley and Michael Strine as president and first vice president of the New York Fed, respectively. Eligible members of the New York Fed's board of directors voted unanimously to reappoint Mr. Dudley and Mr. Strine, and the Federal Reserve Board approved that decision. Their new five-year terms begin March 1, 2016.

The New York Fed press release is available at: https://www.newyorkfed.org/newsevents/news/aboutthefed/2016/oa160219.

US Federal Reserve Board Approves Reappointment of Reserve Bank Presidents and First Vice Presidents

On February 18, 2016, the Federal Reserve Board approved the reappointment of 10 Federal Reserve Bank presidents and 10 first vice presidents by their respective boards of directors. Each individual has been approved to serve a new five-year term beginning March 1, 2016. The recently named presidents of the Federal Reserve Banks of Minneapolis and Dallas, as well as the recently appointed first vice presidents of the Federal Reserve Banks of Philadelphia and Chicago, were approved for terms through February 28, 2021, at the time of their initial appointments.

A list of presidents and first vice presidents, by Federal Reserve District, is available at: http://www.federalreserve.gov/newsevents/press/other/20160219a.htm.

Upcoming Events

February 23, 2016: FCA “Now You Are Authorized” Roadshow for Consumer Credit Firms.

February 24, 2016: BoE Conference Call on Proposed Approach to Setting the Minimum Requirement for Own Funds and Eligible Liabilities (registration closes: February 17, 2016).

February 24, 2016: US House of Representatives Financial Services Committee hearing entitled: “The Impact of the Dodd-Frank Act and Basel III on the Fixed Income Market and Securitizations.”

February 25, 2016: US House of Representatives Financial Services Committee hearing entitled: “The Impact of International Regulatory Standards on the Competitiveness of US Insurers: Part II.”

February 29, 2016: ESMA Open Hearing on the Benchmark Regulation Discussion Paper.

February 29, 2016: ESMA Hearing on Market Abuse Regulation Guidelines.

March 2, 2016: European Commission Public Hearing on Green Paper on Retail Financial Services.

March 3, 2016: US Senate Committee on Banking, Housing, and Urban Affairs hearing entitled: “Regulatory Reforms to Improve Equity Market Structure.”

March 22, 2016: PRA and FCA Seminar on New Bank Start Up Unit (registration closes: February 22, 2016).

March 31, 2016: ECB public hearing on proposed guide to recognition of Institutional Protection Schemes.

Upcoming Consultation Deadlines

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

February 25, 2016: UK Government Proposed Changes for Implementation of Bank Recovery and Resolution Directive.

March 4, 2016: European Supervisory Authorities Discussion Paper on Automation in Financial Advice.

March 7, 2016: CFTC draft technical specifications for certain prioritized swap data elements and associated questions.

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

March 8, 2016: EBA Consultation on Draft Implementing Technical Standards Amending Regulation on Supervisory Reporting of Institutions and Financial Reporting.

March 8, 2016: BoE, PRA and FCA Consultation on Regulators’ Complaints Handling and Procedures.

March 8, 2016: FCA First Consultation on the Implementation of MiFID II.

March 11, 2016: EBA Consultation on Guidelines on the Collection of Information for the Internal Capital Adequacy Assessment Process and Internal Liquidity Adequacy Assessment Process.

March 11, 2016: EBA Consultation on Draft RTS on Information Sharing Between National Regulators under Revised Payment Services Directive.

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.

March 13, 2016: EBA Consultation on Draft RTS on Assessment Methodology for Use of Internal Models for Market Risk.

March 17, 2016: Basel Committee Consultation on Addressing Step in Risk.

March 18, 2016: EBA Consults on Proposed Guidelines on Stress Testing.

March 21, 2016: Federal Reserve Board Framework for Implementing the Basel III Countercyclical Capital Buffer.

March 25, 2016: European Commission Consults on Long Term and Sustainable Investment.

March 31, 2016: ESMA Consultation on Proposed Guidelines under MAR.

March 31, 2016: New York State Department of Financial Services Proposed Transaction Monitoring and Filtering Program.

April 15, 2016: European Central Bank consultation on institutional protection schemes.

May 18, 2016: FCA Call for Input on Retained Provisions of the Consumer Credit Act.

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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