

Financial Regulatory Developments Focus

In this 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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Bank Prudential Regulation & Regulatory Capital

MetLife, Inc. Victorious in its Challenge to its Designation as a Systemically Important Financial Institution

On March 30, 2016, a federal judge in the US District Court for the District of Columbia issued an order rescinding a December 2014 designation by the US Financial Stability Oversight Council of MetLife, Inc., as systemically important. The FSOC's determination would subject MetLife, a global systemically important insurer as identified by the Financial Stability Board and the International Association of Insurance Supervisors, to consolidated supervision by the Board of Governors of the Federal Reserve System, including minimum capital and other enhanced prudential standards. The authority of FSOC to designate nonbank financial institutions for supervision by the Federal Reserve Board was a key part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Other US insurance companies designated by FSOC include Prudential Financial, Inc. and American International Group, Inc., which did not challenge their designations. The court's opinion accompanying the order, which is subject to appeal, is not yet public. Accordingly, the reasoning underlying the court's action is not yet public. The court instructed the parties to file a notice by April 6 stating whether any portions of the opinion should remain under seal.

US Board of Governors of the Federal Reserve System Acts on Numerous Requests for Relief under the Enhanced Prudential Standards Applicable to Foreign Banking Organizations

On March 21, 2016, the US Board of Governors of the Federal Reserve System released letters, each dated February 18, 2016, to eight foreign banking organizations (non-US banks with US banking operations) acting on requests relating to the US intermediate holding company requirement and the US risk committee requirement. In general, the letters reflect very limited flexibility in administering these requirements.

The IHC requirement generally requires an FBO to hold all ownership interests in US subsidiaries under a single US IHC. The Federal Reserve Board denied requests from two Canadian banks that are each subject to the IHC requirement and that hold a US subsidiary through a Canadian joint venture for an exemption from the requirement to transfer the ownership interests in the US subsidiary to their respective IHCs. The Federal Reserve Board also denied an FBO's request for permission to continue to hold a wholly-owned Puerto Rican international banking entity through a Portuguese banking subsidiary rather than through the FBO's IHC. In addition, the Federal Reserve Board denied a request to hold minority interests in US subsidiaries engaged in alternative energy financing outside of an IHC where the effect of doing so would reduce (apparently significantly) the amount of the IHC's regulatory capital.

In contrast, the Federal Reserve Board granted requests from FBOs that are minority co-venturers in certain non-US joint ventures that have very small US subsidiaries to hold those US subsidiaries outside the IHC. The Federal Reserve Board noted that the FBOs bank did not have the power to force a reorganization, that the co-venturers were not themselves subject to the IHC requirement, and that exclusion of the US companies from the IHCs would have an immaterial impact on the capital and liquidity of the IHC. The Federal Reserve Board also required the foreign banks to provide notice if the total assets of the US subsidiaries at issue exceed \$1 billion or 1% of the total assets of the bank's IHC, whichever is smaller, and, in the case of US asset management subsidiaries that were excluded from the IHC requirement, notice if the total assets under management of the US subsidiary exceed 5% of the joint venture's total AUM.

The Federal Reserve Board also granted FBO requests to hold certain US special purpose vehicles outside of an IHC. These include: SPVs formed for the purpose of raising regulatory capital (under home country capital requirements); SPVs that hold US real estate in connection with non-US fiduciary activities; and an SPV established in connection with a litigation reserve.

The Federal Reserve Board granted two narrowly crafted exemptions from the requirement that an FBO with combined US assets greater than \$50 billion, but not subject to the IHC requirement, establish a US risk committee of its board of directors with at least one independent member. The Federal Reserve Board granted one request on the basis that the

FBO was chartered under a special statute that required all of its directors to be executive officers of the bank. The bank instead proposed to establish a committee that included two directors plus one independent member of the committee who is not a director. The Federal Reserve Board concluded the proposal met the spirit of the US risk committee requirement. The Federal Reserve Board also granted a request by an FBO not currently subject to the IHC requirement, but intends to become subject to the requirement, to locate its US risk committee in a to-be-formed US bank holding company that would become an IHC. The Federal Reserve Board noted that granting the request under these circumstances would facilitate an orderly transition to the IHC requirement and overall compliance with the enhanced prudential standards applicable to the FBO. The Federal Reserve Board letters are available at:

<http://www.federalreserve.gov/bankinfo/regulation-yy-foreign-banking-organization-requests.htm>.

EU Extension of Exemption for Commodity Dealers Confirmed

On March 23, 2016, the European Council announced that it had agreed to extend an exemption for commodity dealers under the Capital Requirements Regulation, until December 31, 2020. The CRR currently exempts commodity dealers from large exposures requirements and own fund requirements until December 31, 2017. That date was set on the basis that the Commission would have conducted a review of the prudential regime applicable to commodity dealers and to investment firms by the end of 2015 and, if appropriate, proposed a legislative regime adapted for the risk profile of commodity dealers and investment firms. The Commission's review is still in progress. The European Commission published its proposed legislative amendments to the CRR in December 2015 on the basis that the extension will avoid the need for relevant firms to temporarily comply with the full CRR requirements in 2018 before being subsequently moved to a tailored regime within two to three years.

The announcement is available at: http://www.consilium.europa.eu/press-releases-pdf/2016/3/40802210359_en_635943310200000000.pdf.

European Banking Authority Consults on Changes to Calculation of Interest Rate Risk on Capital Requirements

On March 22, 2016, the European Banking Authority published a consultation paper on standardized methods to compute capital requirements for general interest rate risk under the Capital Requirements Regulation. The CRR provides for two standardized methods, the so-called Maturity-Based calculation for general interest risk and the Duration-Based calculation of general risk. The Duration-Based calculation uses the concept of Modified Duration which is valid only for instruments not subject to repayment risk. Modified Duration is used to measure the sensitivity in price for a unit change in its internal rate of return of any financial asset that consists of fixed cash flows. A correction to the duration is necessary to reflect the repayment risk. The CRR provides the mandate for the EBA to issue guidelines on how the Modified Duration for debt instruments which are subject to repayment risk should be corrected. The EBA proposes two approaches to correct the Modified Duration calculation: (i) treat the debt instrument with repayment risk as if it was a combination of a plain vanilla bond and an embedded bond; or (ii) calculate directly the change in value of the whole instrument subject to repayment risk resulting from a 100-basis-point movement in Interest Rates. Submissions to the consultation are due by June 22, 2016.

The Consultation Paper is available at: <http://www.eba.europa.eu/documents/10180/1412589/EBA-CP-2016-03+%28CP+on+GL+on+corrections+to+modified+duration+for+debt+instruments%29.pdf>.

European Central Bank Regulation Harmonizes Options and Discretions Applicable to Large Eurozone Banks

On March 24, 2016, the European Central Bank Regulation on the exercise of options and discretions relating to the prudential requirements for credit institutions was published in the Official Journal of the European Union. The prudential treatment of options and discretions by regulators is outlined in the Capital Requirements Directive and the Capital Requirements Regulation, known collectively as CRD IV. The ECB is the prudential regulator for Eurozone banks and directly supervises the large Eurozone banks under the Single Supervisory Mechanism, designated as "significant credit institutions." The ECB Regulation sets out the waivers, options and discretions that the ECB has

decided to apply to significant credit institutions in its capacity as the prudential regulator of these firms, which will replace those adapted by the national regulators. The waivers and discretion cover own funds, capital requirements, liquidity and large exposures. The ECB Regulation will apply, subject to limited exceptions, from October 1, 2016, although transitional provisions have been included so that existing national provisions will apply until the ECB sets a common approach for those waivers and discretions not covered in this Regulation. The ECB also published its Guide to harmonizing the exercise of options and discretions regarding the prudential supervision of credit institutions.

The ECB Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.078.01.0060.01.ENG&toc=OJ:L:2016:078:TOC and the ECB Guide is available at: https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/reporting/ceb_guide_options_discretions.en.pdf.

European Banking Authority Consultation on Reporting Financial Information Using GAAP

On March 23, 2016, the EBA launched a consultation on reporting financial information across EU jurisdictions using national Financial Supervisory Reporting Generally Accepted Accounting Practices (GAAP). The EBA reported that institutions across the EU have identified issues with current templates. The consultation has been decentralized so that all questions and feedback on the draft template are provided to jurisdiction-specific Regulators and not through the EBA. The EBA believes it will benefit from the expertise of authorities from different jurisdictions given their knowledge of the local GAAP. The consultation follows a previous consultation in December, 2015, on proposed changes to the FINREP, based on the IFRS 9 requirements. Responses to the consultation are due by April 15, 2016. The EBA stated that it will release a subsequent updated version of the FINREP.

The EBA press release is available at: http://www.eba.europa.eu/news-press/calendar?p_p_id=8&_8_struts_action=%2Fcalendar%2Fview_event&_8_eventId=1413655 and the draft FINREP GAAP template is available at: <http://www.eba.europa.eu/documents/10180/1413658/Draft+templates++FINREP+GAAP+for+decentralised+feedback.xls>.

European Banking Authority Reports on the Small and Medium-sized Enterprise Supporting Factor

On March 23, 2016, the EBA published a report on the Small and Medium-sized Enterprise Supporting Factor. The SME SF was introduced by the CRR to counterbalance the rise in capital requirements resulting from the Capital Conservative Buffer whilst providing an adequate flow of credit to SMEs. The report provides: (i) an analysis of the lending trends and conditions for SMEs; (ii) an analysis of the effective riskiness of EU SMEs over a full economic cycle; and (iii) the consistency of funds requirements laid down in the CRR for credit risk to SMEs. The EBA has concluded that there is currently not enough evidence to suggest that the SME SF has provided additional stimulus for lending to SMEs as compared to larger corporate entities. However, the EBA has also recognized that it may be too early to make strong conclusions based on the current analysis. The EBA makes four recommendations: (i) continued monitoring and a reassessment of the SME SF so as to understand its impact on lending; (ii) a more comprehensive approach for the review of risk weights; (iii) review of the amount owed limit criterion in the application of the SME SF to understand its purpose and costs of application; and (iv) harmonization of the SME definition in the CRR.

The EBA's Report is available at: <http://www.eba.europa.eu/documents/10180/1359456/EBA-Op-2016-04++Report+on+SMEs+and+SME+supporting+factor.pdf>.

European Central Bank Guidance to Large Eurozone Banks on Significant Credit Risk Transfer Recognition

On March 24, 2016, the ECB published Guidance for large Eurozone banks when acting as originator institutions on the recognition of significant credit risk transfer. The Capital Requirements Regulation sets out conditions for the

recognition of a significant risk transfer by an originator institution which are supplemented by EBA Guidelines on Significant Credit Risk Transfer. The ECB is responsible for the direct prudential supervision of the largest banks in the Eurozone. The ECB's Guidance sets out the notification and information requirements for an application for recognition to the ECB. The Guidance should be followed for all securitizations issued after publication of the Guidance.

The Guidance is available at:

https://www.bankingsupervision.europa.eu/ecb/pub/pdf/guidance_significant_risk_transfer.en.pdf?ddd450f00db7a92d5be25a0ad26e6990.

Basel Committee on Banking Supervision Issues Proposals Aimed at Reducing the Variation in Credit Risk-Weighted Assets

On March 24, 2016, the Basel Committee on Banking Supervision released a consultative document entitled "Reducing Variation in Credit Risk-Weighted Assets – Constraints on the Use of Internal Model Approaches", setting forth proposed changes to the advanced internal ratings based approach as well as the foundation internal ratings based approach. Under the IRB approaches, banks are permitted to use internal models to determine their regulatory capital requirements for credit risk. The proposed changes to the IRB approaches include (i) removing the option to use the IRB approaches for certain exposure categories (banks and other financial institutions, including insurance companies; large corporates; equities; and specialized lending that use banks' estimates of model parameters); (ii) adopting certain parameters to ensure a minimum level of conservatism for portfolios utilizing the IRB approaches; and (iii) providing greater specification of parameter estimation practices. Other proposals include, for example, changes to the credit risk mitigation haircuts for nonfinancial collateral under the foundation IRB approach. The proposed changes to the IRB approaches form a key element of the overall regulatory reform program that the Basel Committee hopes to finalize by year-end 2016, with the ultimate aim to: (i) reduce the complexity of the regulatory framework and improve comparability across banks; and (ii) address undue variability in the capital requirements for credit risk. The Basel Committee noted that the treatment of sovereign exposures is subject to ongoing review. Comments on the consultation are due by June 24, 2016.

In another model-related action, the Basel Committee noted that it was eliminating the proposed internal model approach to the proposed framework for credit valuation adjustment risk.

The full text of the Basel Committee consultative document is available at: <http://www.bis.org/bcbs/publ/d362.pdf>.

Bank Structural Reform

Financial Conduct Authority Publishes Near-Final Rules on Disclosure by Non-Ring-Fenced Banks

On March 24, 2016, the Financial Conduct Authority published its Policy Statement and near-final rules requiring information to be provided to customers by a non-ring-fenced body. The rules will require a NRFB to provide information about its investment and commodities trading activities to individuals with financial assets of at least £250,000 who are account holders or who have applied to open an account. The information is intended to inform customers of the implication of banking with a NRFB entity in a group which includes a ring-fenced bank. The ring-fencing regime is set to apply from January 1, 2019. The FCA intends to finalize the rules later in 2016. Publishing the near-final rules now is intended to give banks time to assess the implications before they implement their Ring Fencing Transfer Schemes. A bank will need to comply with the disclosure rules in the period immediately before its structural separation, although the disclosure would not have to be sent until a bank expects to receive a declaration of eligibility from a customer (i.e., a declaration that the customer has held assets of not less than £250,000 over a certain period).

The Policy Statement and Near-Final Rules are available at: <http://www.fca.org.uk/static/documents/ps16-9.pdf>.

Consumer Protection

European Banking Authority Publishes Formula for Creditors to Calculate Rates under Mortgage Credit Directive

On March 21, 2016, the EBA published a final Decision setting out the formula to be used by creditors when calculating the benchmark rate under the Mortgage Credit Directive. The MCD requires creditors to provide consumers with certain pre-contractual personalized information, including calculated illustrations of the annual percentage rate of charge and of the maximum installment amount based on the highest value of any external reference rate used in calculating the borrowing rate, or, where the creditor does not use an external reference rate, the highest value of a benchmark rate as specified by a national regulator or the EBA. The EBA has therefore developed a formula for creditors to use to calculate such a rate which uses the underlying rate of the European Central Bank for Eurozone countries, or the Member State's central bank rate for non-Eurozone countries. The Decision will come into effect once it is published in the Official Journal of the European Union.

The Decision is available at:

<http://www.eba.europa.eu/documents/10180/1411608/Final+Report+on+decision+of+European+Banking+Authority+specifying+the+benchmark+rate+under+MCD.pdf>.

Derivatives

US Commodity Futures Trading Commission Approves Alternative to Fingerprinting for Foreign Natural Persons Applying for Registration

On March 28, 2016, the US Commodity Futures Trading Commission approved a final rule that would allow a foreign natural person applying for CFTC registration to complete and submit a criminal history background check as an alternative to submitting fingerprints. The final rule codifies and supersedes no-action relief previously given in CFTC Staff Letters 12-49 and 13-29. The final rule will become effective 30 days after publication in the Federal Register.

The full text of the CFTC final rule is available at:

<http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/federalregister032816.pdf>.

Financial Market Infrastructure

Treasury Secretary Jacob J. Lew Testifies Before the US House Committee on Financial Services

On March 22, 2016, the Secretary of the US Department of the Treasury, Mr. Jacob J. Lew, testified before the US House of Representatives' Committee on Financial Services, where he discussed the importance of maintaining and developing relationships with international financial institutions, including the International Monetary Fund. Secretary Lew asserted that the IMF is the "foremost international institution for promoting financial stability" as well as an international institution that could serve to advance US interests through, among other things, implementing AML policies and strengthening economic surveillance. In addition, Secretary Lew advocated for increased US support for international development banks, such as the World Bank, and specialized multilateral funds, arguing that support for such institutions would promote national security and economic growth through investments in developing and emerging economies and business climate reform.

The full text of Secretary Lew's statement is available at: <https://www.treasury.gov/press-center/press-releases/Pages/j10394.aspx>.

Financial Services

Final Guidelines on Product Oversight and Governance Arrangements for Retail Banking Products Translated Into Official EU Languages

On March 22, 2016, the EBA published translations of its final guidelines on product oversight and governance arrangements for retail banking products. The retail banking products included are mortgages, personal loans, deposits, payment accounts, payment services and electronic money. The guidelines are addressed to EU national regulators and financial institutions and require the establishment of product oversight and governance arrangements for the design, bringing to market and review of retail banking products over their lifecycle. The guidelines will apply from January 3, 2017, to all products brought to market after that date as well as to existing products that are significantly changed after that (the EBA has not provided clarification on the meaning of “significantly changed”).

The Translated Guidelines are available at: <http://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-on-product-oversight-and-governance-arrangements-for-retail-banking-products/-/regulatory-activity/consultation-paper>.

European Commission Seeks Views on Harmonizing EU Insolvency Regimes under its Capital Markets Union Action Plan

On March 23, 2016, the European Commission launched a consultation seeking views on key insolvency principles and standards which could ensure that national insolvency frameworks work in a cross-border context. The consultation is part of the Commission’s Capital Markets Union Action Plan which aims to remove barriers to the free flow of capital. Responses will be used to identify which aspects could be included in a legislative initiative or other related actions. It takes the form of various multiple choice questions and one open question, which seem to be aimed at initial framing of how this initiative should be taken forward. The consultation is open until June 14, 2016.

The consultation website is available at: http://ec.europa.eu/justice/newsroom/civil/opinion/160321_en.htm.

Funds

Final EU Legislation on Obligations of Depositaries under UCITS V

On March 24, 2016, Commission Delegated Regulation with regard to obligations of depositaries was published in the Official Journal of the European Union. The Undertakings for Collective Investment in Transferable Securities (UCITS V) Directive outlines requirements regarding depositaries’ duties, delegation arrangements and the liability regime for UCITS assets under custody. The Regulation supplements the obligations set out in UCITS V. It specifies definitions and details of written contracts for the appointment of a depositary including, amongst other things, that the written contract should comprise all necessary details for the appropriate safekeeping of all UCITS assets by the depositary or a third party delegated with safekeeping functions and for the depositary to properly fulfill its oversight and control functions. The written contract must also provide sufficient detail on the categories of financial instruments in which the UCITS may invest and cover the geographical regions in which the UCITS plans to invest.

The Regulation details general duties associated with depositary oversight, subscription and redemptions, valuation functions, the timely settlement of transactions, monitoring of UCITS cash flows, payment upon subscription, safekeeping duties for assets held in custody, segregation obligations and the obligation of depositaries to monitor third parties performing safekeeping functions and insolvency protection of UCITS assets when delegating custody functions. It also outlines the obligations on depositaries following the loss of a financial instrument held in custody and the circumstances in which a depositary can discharge liability.

The Regulation provides for independence requirements to mitigate risks associated with common management between the management company or investment company and the depositary. It requires the establishment of procedures for the appointment of a depositary and the delegation of safekeeping, procedures to identify and avoid any

conflicts of interest between parties and the minimum requirements for independent board members of the management company and management body of the depositary where a conflict of interest exists. The Regulation will enter into force on April 13, 2016, and will apply, subject to certain exceptions, directly across the EU from October 13, 2016.

The Delegated Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.078.01.0011.01.ENG&toc=OJ:L:2016:078:TOC.

MiFID II

EU Guidelines on Assessing Knowledge and Competence under MiFID II

On March 22, 2016, the European Securities and Markets Authority published translations of its guidelines on the assessment of the knowledge and competence of individuals providing investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of investment firms. Under the revised Markets in Financial Instruments Directive, an investment firm is required to ensure that individuals giving investment advice or providing information about financial instruments, investment services or ancillary services to clients have the necessary knowledge and competence to do so and satisfy the firm's obligations on suitability, appropriateness and reporting and provision of information to clients. Where requested by its national regulator, an investment firm may be requested to demonstrate that these requirements have been met. National regulators must publish the criteria that will be used to assess such knowledge and competence. ESMA's guidelines, which apply to national regulators and investment firms, specify criteria for the assessment of knowledge and competence, establishing the minimum standards that staff providing the relevant services should meet. The guidelines will come into effect on January 3, 2017.

The guidelines are available at: <https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence>.

European Securities and Markets Authority Drafting an Opinion on Proposed Amendments to Technical Standards under MiFID II

On March 21, 2016, the ESMA published three letters from it to the European Commission concerning certain Regulatory Technical Standards under the revised Markets in Financial Instruments Directive and the Markets in Financial Instruments Regulation, together known as MiFID II. The Commission wrote to ESMA on March 14, 2016, notifying ESMA that amendments are required to the RTS on position limits for commodity derivatives, non-equity transparency requirements and on the exemption from license requirements under MiFID II for commodity trading firms (the ancillary activities exemption). ESMA has confirmed that it will act swiftly in preparing its Opinions on the proposed amendments. It is as yet unknown whether the other RTS produced by ESMA last year have been accepted by the European Commission.

The letters are available at: <https://www.esma.europa.eu/press-news/esma-news/esma-writes-european-commission-draft-mifid-ii-rts>.

UK Prudential Regulation Authority Consults on Implementing Aspects of MiFID II

On March 24, 2016, the Prudential Regulation Authority published its proposals for transposing certain aspects of the Markets in Financial Instruments legislative package, which comprises the Markets in Financial Instruments Directive and the Markets in Financial Instruments Regulation, collectively known as MiFID II. The PRA's proposals relate to the passporting regime and algorithmic trading only—the PRA will consult on other aspects related to MiFID II in due course.

Under MiFID II, the scope of the passporting regime has been extended to include the operation of an organized trading facility (a new type of trading venue for non-equity instruments) and emissions allowances. The PRA is proposing that firms that intend to extend their passports to these additional activities or investment types should notify the PRA. Existing passports will remain valid and unchanged. In addition, the PRA intends to use the new EU notification forms

developed by the ESMA. Also, the current declaration for passport notifications under the Capital Requirements Directive will be extended to passport notifications made under MiFID II. For firms that want to passport their MiFID activities under their Capital Requirements Directive passport, the PRA will continue using the European Banking Authority's forms.

MiFID II also introduces new rules on algorithmic trading. The PRA proposes to transpose the prudential requirements relating to algorithmic trading in a new part of the PRA Rulebook on Algorithmic Trading. The proposals include rules requiring firms that engage in algorithmic trading to ensure that their trading systems are resilient, have sufficient capacity, subject to appropriate trading thresholds and limits, prevent the sending of erroneous orders and do not contribute to a disorderly market. Firms would also need to have business continuity arrangements in place in the event of a failure, which would have to be tested and monitored.

Responses to the PRA's proposals are due by May 27, 2016. The PRA proposals are subject to change dependent on the final requirements that are set out in the European Commission's delegated acts on these requirements.

The PRA's consultation paper is available at:

<http://www.bankofengland.co.uk/pradocuments/publications/cp/2016/cp916.pdf>.

Payment Services

UK Payment Systems Regulator Publishes Guidance on Super Complaints

On March 22, 2016, the UK Payments Systems Regulator published its final Guidance for designated representative bodies making so-called "super complaints" under the Financial Services (Banking Reform) Act 2013. The representatives can issue complaints to the Payments Systems Regulator when one or more features of a UK-operated market (or a market that operates only in part in the UK) for services provided by payment systems are, or appear to be, significantly damaging the interests of payment service users. Super complaints are complaints made on behalf or as a result of issues affecting a large number of users. The list of designated representative bodies published by HM Treasury in February will become effective on April 1, 2016. The first designated representative bodies are: (i) the National Association of Citizens Advice Bureaux; (ii) the General Consumers' Association; (iii) the Consumer Council for Northern Ireland; (iv) the National Federation of Self Employed and Small Businesses; and (v) Age UK.

The PSR's Guidance is available at: <https://www.psr.org.uk/sites/default/files/media/PDF/Super-complaints-final-guidance.pdf>.

UK Payment Systems Regulator Final Guidance on Application of EU Interchange Fee Regulation

On March 24, 2016, the PSR published its final Guidance on the application of the EU Interchange Fee Regulation. The IFR, which is directly applicable across the EU, applies to payment card schemes, issuing and acquiring payment service providers, processing entities, other technical service providers and, in certain circumstances, merchants. The IFR applies to the following payment card schemes: MasterCard, Visa Europe, American Express, Diners Club International, JCB International and Union Pay International. The PSR's Guidance covers: (i) the classification of schemes for IFR purposes; (ii) interchange fee caps and the possible exemption from those caps for some three-party schemes; (iii) the PSR's powers and procedures, including penalties for non-compliance; and (iv) the business rules. The PSR intends to consult later this year on guidance to cover the remaining provisions of the IFR that come into force on June 9, 2016.

Separately, the PSR announced its final determination on whether American Express qualifies for an exemption from the interchange fee caps introduced by the IFR which impose caps on interchange fees on debit and credit card transactions where the issuer and acquirer are both located in the EEA. Three-party card schemes may qualify for an exemption from the IFR interchange fee caps on UK domestic card-based payment transactions depending on their

market share. The PSR's interim decision, published in December 2015, was that American Express was not exempt. The PSR has confirmed that American Express is not exempt and that it must comply with the interchange fee caps from April 1, 2016, to March 31, 2017.

The Guidance is available at: https://www.psr.org.uk/sites/default/files/media/PDF/IFR-final-guidance-phase-1_0.pdf and the announcement is available at: <https://www.psr.org.uk/psr-publications/news-announcements/final-determination-card-schemes-subject-to-cap-March-2016>.

Recovery & Resolution

EU Regulatory Technical Standards for Recovery and Resolution

On March 23, 2016, a Commission Delegated Regulation, in the form of Regulatory Technical Standards, was published specifying procedural-and-content-related requirements for the recovery and resolution of banks and certain investment firms under the EU Bank Recovery and Resolution Directive. In particular, the RTS set out the requirements for: the content of recovery plans, the criteria for the assessment of recovery plans, content of resolution plans and assessment criteria for resolvability, conditions for group financial support and the circumstances in which a person is independent from both the resolution authority and the institution or entity in recovery or resolution. The RTS also provides for: recognition of write-down and conversion powers, procedure and content of notifications to a regulator when a firm is assessed as failing or likely to fail and rules specifying the operational functioning of resolution colleges. The RTS must still be approved by the European Parliament and the Council of the European Union and be published in the Official Journal before they can enter into force.

The Delegated Regulation is available at: <http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-1691-EN-F1-1.PDF>.

Upcoming Events

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

April 7, 2016: US Senate Committee on Banking, Housing and Urban Affairs hearing entitled "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress."

April 8, 2016: FCA roundtable event, Asset management: How does the regulatory framework affect competition? (registration closes: April 1, 2016).

April 14, 2016: US Senate Committee on Banking, Housing and Urban Affairs hearing entitled "Examining Current Trends and Changes in the Fixed-Income Markets."

April 15, 2016: European Banking Authority, public hearing on its draft report, Leverage Ratio (registration closes: March 25, 2016).

April 29, 2016: First Single Resolution Board Conference: Charting the Course – Making Bank Resolution Work.

Upcoming Consultation Deadlines

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 5, 2016: Federal Reserve Board Notice of Proposed Rulemaking to Collect Financial Information from US Intermediate Holding Companies of Foreign Banking Organizations.

April 15, 2016: ECB Consultation on Institutional Protection Schemes.

April 21, 2016: PSR Report into Banks and UK Payment Infrastructure.

May 2, 2016: FDIC/SEC Notice of Proposed Rulemaking on Covered Broker-Dealer Provisions under Title II of the Dodd-Frank Act.

May 3, 2016: FCA Consultation on Proposed Changes to Payment Accounts Regulation.

May 16, 2016: PRA Consultation on Proposed Amendments to Rules on Contractual Recognition of Bail-in.

May 26, 2016: FDIC Notice of Proposed Rulemaking on Recordkeeping for Timely Deposit Insurance Determination.

June 3, 2016: Federal Reserve Board Notice of Proposed Rulemaking on Single-Counterparty Credit Limits for Domestic and Foreign Bank Holding Companies.

June 14, 2016: EC Consultation on Harmonizing EU Insolvency Regimes Under its Capital Markets Union Action Plan.

June 22, 2016: EBA Consultation on Changes to Calculation of Interest Rate Risk on Capital Requirements.

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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