

FINANCIAL REGULATORY DEVELOPMENTS FOCUS

In this week's newsletter, we provide a snapshot of the principal U.S., European and global financial regulatory developments of interest to banks, investment firms, broker-dealers, market infrastructure providers, asset managers and corporates.

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AML/CTF, Sanctions and Insider Trading

UK Joint Money Laundering Steering Group Consults on Revised AML/CTF Guidance for Asset Finance and Syndicated Lending

On March 8, 2018, the U.K. Joint Money Laundering Steering Group launched a short consultation on minor changes to Part II of its anti-money laundering and counter-terrorist financing guidance in relation to two sectors, namely asset finance and syndicated lending.

In the press release announcing the draft revised guidance, the JMLSG clarifies that the revisions do not make substantive changes to the existing guidance. Instead, the proposals provide clarification on the workings of these two sectors, how to identify customers and how risks should be assessed.

The JMLSG invites comments on the proposed revisions by March 30, 2018.

The consultation is available at: <http://www.jmlsg.org.uk/news/the-joint-money-laundering-steering-group-jmlsg-today-publishes-proposed-re>.

UK Joint Money Laundering Steering Group Obtains Ministerial Approval for Updated Guidance

On March 5, 2018, the U.K.'s JMLSG confirmed that it has received approval from HM Treasury for the final revised guidance it published in December 2017 on anti-money laundering and counter-terrorist financing for the financial services sector. The revisions to the guidance align it with the provisions of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, which is the U.K. implementing legislation for the Fourth EU Money Laundering Directive (4MLD) and the revised Wire Transfer Regulation (WTR) which came into effect on June 26, 2017. 4MLD seeks to give effect to the updated Financial Action Task Force global standards which promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. WTR sets out the minimum requirements that are essential to ensure the traceability of transfers of funds.

Alignment with the U.K. implementing regulations for 4MLD and WTR required JMLSG to make various changes, including to its guidance on electronic verification and its sectoral guidance on electronic money and to re-order and clarify its guidance on risk assessment and the risk-based approach. Other minor textual amendments were also made to conform the JMLSG guidance with the Criminal Finances Act 2017 which came into force on September 30, 2017.

The JMLSG invited firms to review and use the updated guidance from December 2017. However, now that it has received formal approval from HM Treasury, firms complying with the updated guidance can benefit from a safe harbor under certain elements of the U.K.'s AML and CTF legislation.

The JMLSG's announcement is available at: <http://www.jmlsg.org.uk/industry-guidance/article/jmlsg-guidance-current> and the U.K. implementing regulations for 4MLD and WTR are available at: http://www.legislation.gov.uk/ukxi/2017/692/pdfs/ukxi_20170692_en.pdf.

Financial Stability Board Releases Updated Data Report on Correspondent Banking

On March 6, 2018, the Financial Stability Board published an update to its correspondent banking data report. The latest data report updates the data report the FSB published in July 2017 alongside a report for the G20 on progress made on the four point action plan the FSB launched in November 2015 to address the decline in correspondent banking relationships. The latest data report updates the July 2017 data report with additional information provided by SWIFT incorporating the period from January to June 2017.

This new data reveals the average number of active corridors per country (that is, direct relationships between countries, measured by the flow of SWIFT messages) increased in the first half of 2017 in Oceania, Eastern Europe and Northern America but declined in the rest of the Americas and of Europe, as well as Africa and Asia. There was continued reduction in the total number of active correspondents (as measured by the number of banks that have sent or received messages corridor by corridor in a given month). This decline in active correspondents has not resulted in a lower number of payment messages (volume) or a lower underlying value of the messages processed through SWIFT, leading the FSB to conclude that the higher volume of messages could in part reflect a lengthening of payment chains, as previously discussed in its July 2017 report. Concentration levels of correspondent banking remain high.

The FSB plans to publish a further progress report for the G20 in March 2018 on its work to address the decline in correspondent banking relationships. It will also publish a fuller data analysis, based on end-2017 data, in mid-2018.

The updated data report is available at: <http://www.fsb.org/wp-content/uploads/P060318.pdf>, the FSB press release is available at: <http://www.fsb.org/wp-content/uploads/R060318-1.pdf> and the four point action plan is available at: <http://www.fsb.org/2015/11/fsb-releases-report-to-g20-on-the-decline-in-correspondent-banking/>.

Wolfsberg Group Updates Correspondent Banking Due Diligence Questionnaire

On March 6, 2018, the Wolfsberg Group published an updated version of its Correspondent Banking Due Diligence Questionnaire (dated February 22, 2018). The CBDDQ has been enhanced and expanded in line with regulatory expectations on strengthening and building due diligence tools. The Group has also published guidance on completing the CBDDQ, frequently asked questions and a glossary. The CBDDQ is intended to provide a standardized document for use by those needing to conduct due diligence on correspondent banks. Over time, it is hoped that use and availability of the CBDDQ may, among other things, help prevent unnecessary de-risking.

The Wolfsberg Group was established in 2002 and comprises 13 banks. Its objective is to develop frameworks and guidance for the management of financial crime risks. The CBDDQ is intended to support the work on de-risking in correspondent banking by the FSB, the FATF and the Committee on Payments and Market Infrastructures.

The updated CBDDQ (version 1.2) is available at: https://www.wolfsberg-principles.com/sites/default/files/wb/pdfs/Wolfsberg%27s_CBDDQ_220218_v1.2.pdf, the completion guidance is available at: https://www.wolfsberg-principles.com/sites/default/files/wb/pdfs/Wolfsberg%27s_CBDDQ_Completion_Guidance_220218_v1.0.pdf, the FAQs are available at: https://www.wolfsberg-principles.com/sites/default/files/wb/pdfs/Wolfsberg%27s_CBDDQ_FAQs_220218_v1.0.pdf and the Glossary is available at: https://www.wolfsberg-principles.com/sites/default/files/wb/pdfs/Wolfsberg%27s_CBDDQ_Glossary_220218_v1.0.pdf.

Bank Prudential Regulation & Regulatory Capital

US Federal Reserve Board Provides Updated CCAR and DFAST Questions and Answers

On March 9, 2018, the U.S. Board of Governors of the Federal Reserve System published updates to its Comprehensive Capital and Analysis Review and Dodd-Frank Act Stress Tests questions and answers guide. The Federal Reserve Board provided additional questions and answers with respect to a number of topics, including general CCAR considerations, range of practice and supervisory expectations, FR Y 14-A report

supporting documentation and the remediation of supervisory findings. Specifically, the updated Federal Reserve Board guidance addresses the treatment of the base erosion and anti-abuse tax (BEAT), and other aspects of the 2017 Tax Cut and Jobs Act. The question posed with respect to this topic expressed concern that the BEAT provisions, as drafted, appear to contain a number of perceived inconsistencies and uncertainties, which could potentially lead to inconsistent interpretations across financial institutions. The Federal Reserve Board references its March 2, 2018 letter that describes enhancements to the supervisory models for DFAST 2018, including that the models have not been adjusted to account for the BEAT. With respect to CCAR, the Federal Reserve Board references its 2018 instructions, which note that financial institutions must account for the impact of the TCJA in regulatory reports, financial statements and CCAR projections. The Federal Reserve Board noted that the U.S. Department of the Treasury intends to issue clarifying guidance on the implementation of certain provisions of the TCJA, but that regardless, financial institutions should reflect the TCJA in their CCAR projections on a “best efforts” basis, and highlight the effect that these uncertainties had on their projections in their respective capital plans. The Federal Reserve Board did note, however, that the first day letter, circulated on February 14, 2018, to members of the Large Institution Supervision Coordinating Committee and large and complex firms did not contemplate tax modeling within its areas of scope.

The full CCAR and DFAST questions and answer guide is available at:

<https://www.federalreserve.gov/publications/files/CCAR-QAs.pdf>.

US Federal Reserve Board Proposes Amendments to Regulation J - Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire

On March 6, 2018, the U.S. Board of Governors of the Federal Reserve System published a proposed rule that would amend Regulation J (Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers through Fedwire). The proposed amendments are intended to better harmonize Regulation J with the Federal Reserve Board’s recent amendments to Regulation CC (Availability of Funds and Collection of Checks), and to reflect a transition from a paper-based check collection system to one that is essentially entirely electronic. The proposed amendments are designed to clarify and simplify provisions of Subpart A of Regulation J, while removing obsolete provisions, and to better reflect the rights of stakeholders, including with respect to the Federal Reserve Banks. The amendments also include proposed clarifications to Subpart B of Regulation J to reinforce that terms used in financial messaging standards do not confer legal status or responsibilities. Comments to the Federal Reserve Board’s proposal are due 60 days from its publication in the Federal Register.

The full text of the Federal Reserve Board proposal is available at:

<https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180306a1.pdf>.

US House of Representatives Passes Regulatory Reform Bills and Senate Continues Debate on Regulatory Reform Bill

On March 6, 2018, the U.S. House of Representatives passed four bills from the U.S. House Financial Services Committee, all by voice vote, which are primarily designed to reduce the regulatory burden on financial institutions. The bills that passed include: the Comprehensive Regulatory Review Act (H.R. 4607), which amends the Economic Growth and Regulatory Paperwork Reduction Act of 1996 to include the U.S. Consumer Financial Protection Bureau and the U.S. National Credit Union Administration, and would shorten the review cycle from every ten years to every seven years; a pair of bills that are based on provisions of the Financial CHOICE Act that passed the House in June of 2017 (the Portfolio Lending and Mortgage Access Act (H.R. 2226), which makes certain amendments to the Truth in Lending Act, and the Community Bank

Reporting Relief Act (H.R. 4725), which amends the Federal Deposit Insurance Act to direct federal financial regulators to issue regulations that reduce the reporting requirements for the first and third annual report of condition for certain financial institutions with \$5 billion or less in consolidated assets); and the Strategy for Combating the Financing of Transnational Criminal Organizations Act (H.R. 4768), which directs the President to establish, through the U.S. Secretary of the Treasury, a strategy to disrupt the financial networks of transnational criminal organizations, which will be refreshed every two years. At the same time the full U.S. Senate will continue debating the “Economic Growth, Regulatory Relief and Consumer Protection Act” (S. 2155), which passed the U.S. Senate Banking Committee. A vote is possible this week, but before the legislation would go to the President’s desk, it would need to pass in the House. To that end, House Financial Services Committee Chair Jeb Hensarling circulated a list of 29 proposals that he would want included in any final legislation.

The full text of the House bills is available at:

<https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=403111>.

European Banking Authority Consults on Draft Guidelines on Managing Non-Performing Exposures

On March 8, 2018, the European Banking Authority commenced a consultation on draft Guidelines on the management of non-performing and forborne exposures. The Capital Requirements Directive requires in-scope banks and investment firms to have robust governance arrangements and effective processes to identify, manage, monitor and report the risks to which the firm is exposed. The EBA is responsible for issuing related guidelines to further harmonize across the EU how firms implement these obligations.

Since the 2007/08 financial crisis, there has been a build-up of non-performing loans in the EU, which impacts banks’ viability and lending capabilities. In March 2017, the European Central Bank finalized its Guidance on managing NPLs, which applies to all Eurozone Significant Institutions supervised by the ECB in the Single Supervisory Mechanism as well as their international subsidiaries. The EBA’s draft Guidelines similarly aim to reduce the build-up of non-performing exposures (NPEs) in a bank’s balance sheet.

The EBA’s proposed Guidelines set out sound risk management practices for banks for managing NPEs, forborne exposures (FBE) and foreclosed assets and apply to all exposures that fall within the definition of non-performing and forbearance in the ITS on Supervisory Reporting (Commission Implementing Regulation (EU) No 680/2014). The finalized Guidelines will also apply to national regulators responsible for assessing firms’ risk management of NPEs and FBEs, as part of the Supervisory Review and Evaluation Process. National regulators must also ensure that firms comply with the Guidelines on an individual, sub-consolidated and consolidated basis.

The EBA is proposing a two-tier system, which would subject firms with high levels of NPEs to more onerous requirements. It is proposed that firms with high levels of NPEs (above 5%) or with a material amount of NPEs in an individual portfolio or a high concentration to a geographic region, economic sector or group of connected clients, be required to develop an NPE strategy and establish NPE governance and operations framework for all NPEs and portfolios with material levels of NPEs.

The EBA proposes that all firms should establish an early warning and reporting and escalation process in relation to potential non-performing borrowers as well as implement a variety of forbearance measures. Firms will also need to implement governance and operational structures around NPE recognition and on NPE impairment measurements and write-offs. The proposed Guidelines also require all firms to adopt policies and procedures which set out clear expectations on the valuation of immovable and movable property held as collateral for NPEs.

Responses to the consultation should be provided by June 8, 2018. The EBA intends to finalize the guidelines during summer 2018. The EBA is proposing that the Guidelines would apply from January 1, 2019.

The EBA's consultation paper is available at:

<http://www.eba.europa.eu/documents/10180/2150622/Consultation+Paper+on+Guidelines+on+management+of+non-performing+and+forborne+exposures+%28EBA-CP-2018-01%29.pdf> and the ECB's Guidance is available at: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/guidance_on_npl.en.pdf.

Brexit for Financial Services

UK Regulator Launches Survey for EEA Firms Operating in the UK Under Single Market Passports

On March 9, 2018, the U.K. Financial Conduct Authority launched a short online survey seeking information from European Economic Area firms currently operating in the U.K. under a passport. The information obtained will identify those firms for which a "temporary permission" may be relevant following the U.K.'s withdrawal from the European Union. The possibility of a "temporary permission regime" was raised by HM Treasury in December 2017 as a means by which firms previously operating under a passport would be able to enter into new business and fulfil existing contracts with U.K. customers for a period of time after exit day, while seeking full authorization in the U.K. HM Treasury has not yet prepared legislation relating to the temporary permissions regime. However, the FCA believes that it is likely that firms operating under a passport would need to inform it of their intention to operate under the temporary regime via a straightforward notification process in advance of the U.K.'s withdrawal.

The survey should be completed by any firm that passports into the U.K. (either via a branch or on a cross-border services basis) or that markets funds in the U.K. Dual-regulated firms will need to follow the regime set out by the Prudential Regulation Authority.

The FCA seeks responses to the survey by May 11, 2018.

The FCA survey is available at: <https://www.fca.org.uk/eu-withdrawal/survey-eea-inbound-passported-firms> and details of U.K. Government's and regulators' approaches for Brexit are available at: <http://finreg.shearman.com/uk-regulators-confirm-approach-to-authorization-a>.

Conduct & Culture

Financial Stability Board Issues Supplementary Guidance to its Principles and Standards on Sound Compensation Practices

On March 9, 2018, the FSB published the finalized version of its Supplementary Guidance on its Principles and Standards on Sound Compensation Practices, following feedback to a consultation it launched in June 2017.

The Supplementary Guidance relates to the use of compensation tools to address misconduct risk. Misconduct, for the purposes of the Supplementary Guidance, should generally be understood as conduct that falls short of expected standards, including legal, professional, internal conduct and ethical standards.

The Supplementary Guidance is consistent with the FSB's existing Principles and Standards on Sound Compensation Practices and provides guidance on better practice for addressing misconduct risk without adding any new or additional principles or standards. It is broken down into sections covering: (i) governance of compensation and misconduct risk; (ii) effective alignment of compensation with misconduct risk; and (iii)

supervision of compensation and misconduct risk. FSB members are asked to apply the Supplementary Guidance to significant institutions and in a way consistent with the law and regulation of their jurisdictions.

The Supplementary Guidance is available at: <http://www.fsb.org/2018/03/supplementary-guidance-to-the-fsb-principles-and-standards-on-sound-compensation-practices-2/>.

Enforcement

UK Government Launches Independent Review of the Prudential Supervision of the Co-operative Bank

On March 6, 2018, HM Treasury directed the PRA to conduct an independent investigation into the prudential regulation of the Co-operative Bank plc during the period 2008 to 2013. HM Treasury is empowered to require the FCA or PRA to undertake investigations where it considers that such an investigation is in the public interest and the relevant regulator has not launched an investigation on its own initiative. The investigation will consider the actions, policies and approach of the Financial Services Authority and one of the successors to its functions, the PRA, during their respective periods in charge of prudential supervision, including the withdrawal by the Co-operative Bank from the bidding process to purchase bank branches from Lloyds Banking Group (known as Project Verde).

HM Treasury's action follows confirmation by the FCA that it has concluded enforcement investigations into the Co-operative Bank. On the same day, the FCA announced that Paul Flowers, former Chair of the Co-operative Bank, has been banned from the financial services industry on the grounds that he is not a fit and proper person to perform functions in relation to any regulated activity.

The Government's announcement is available at: <https://www.gov.uk/government/news/independent-review-of-the-co-operative-bank-launched>, the Direction to the PRA is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/685503/Direction_to_the_Prudential_Regulation_Authority_to_investigate_the_prudential_regulation_of_the_Co-operative_Bank_plc_during_the_period_2008_-_2013.pdf and the FCA's final notice is available at: <https://www.fca.org.uk/publication/final-notice/paul-john-flowers-2018.pdf>.

Financial Market Infrastructure

European Central Bank Confirms Collective Agreement Between TARGET2 Participants

On March 9, 2018, the ECB confirmed that a collective agreement signed between the central banks operating TARGET2 component systems and the central securities depositories operating on the TARGET2-Securities platform can enter into force. The provisions of the Collective Agreement will take effect on March 20, 2018. The Collective Agreement provides a definition of a "common moment of entry" for payments and securities transfer orders that are matched in the systems of the signatories to the agreement. This common moment of entry will either be the moment at which a transfer order has been declared compliant with the technical rules of T2S by either the T2S platform or, if the CSD is operating a separate matching component, by the CSD. Defining the common moment of entry makes it possible to establish the point at which securities transactions become irrevocable and accordingly will provide certainty regarding the treatment of outstanding transactions if a participant becomes insolvent.

In its explanatory note the ECB stated that the Collective Agreement "marks the latest step in the process of harmonisation of procedures and tools among the system operators using the T2S platform and is a further milestone in the integration of payments and securities settlement systems across Europe."

The Collective Agreement is available at:

http://www.ecb.europa.eu/paym/t2s/progress/pdf/collective_agreement.pdf and the explanatory note is available at: http://www.ecb.europa.eu/paym/t2s/progress/pdf/explanatory_note-entry_into_force_of_collective_agreement.pdf.

FinTech

European Commission Outlines its Action Plan for FinTech

On March 8, 2018, the European Commission issued a Communication on FinTech to the European Parliament, the European Council, the ECB, the European Economic and Social Committee and the Committee of the Regions.

The Communication sets out the Commission's Action Plan for FinTech, building on responses from the Commission's public consultation on its policy approach to FinTech, which ran from March to June 2017, and on the work of the Task Force on Financial Technology which was established in November 2016. The Action Plan is part of the Commission's efforts to build a Capital Markets Union and a true single market for consumer financial services. It is also part of its drive to create a Digital Single Market. The Communication is accompanied by Frequently Asked Questions on FinTech and a factsheet.

At this stage, the Commission considers that there is limited need for regulatory or legislative action or reform. However, the outcome of ongoing monitoring and assessment of innovative technologies may point to the need for regulatory action at EU level in the future. The current Action Plan is concerned with initiatives designed to facilitate the emergence of innovative models throughout the EU (through sandboxes and similar approaches), to enable innovative models to scale up (through consistent licensing, common standards and interoperability). The Commission also aims to improve the uptake of technological innovation in the financial sector, by ensuring the suitability of the regulatory regime, reducing barriers to entry for innovative firms such as cloud service providers and, in particular, harnessing the potential of blockchain and other distributed ledger technologies. The Action Plan further outlines planned initiatives to strengthen cybersecurity as well as the integrity of the financial system.

An Annex to the Communication sets out a Workplan for 23 separate initiatives to be undertaken either by the Commission itself or by the European Supervisory Authorities. In summary these are:

- To enable innovative models to scale up through consistent licensing: (i) the Commission has published a separate legislative proposal harmonizing licensing requirements and providing an EU passport for crowdfunding services providers; (ii) the Commission will continue monitoring developments of crypto-assets and Initial Coin Offerings and assess, by Q4 2018, whether regulatory action is required at EU level; and (iii) the ESAs are requested to map current authorizing and licensing approaches for innovative FinTech business models and, by Q1 2019, to provide any necessary guidance to national regulators or recommendations for adapting EU legislation.
- To develop more coordinated approaches on standards for FinTech, the Commission will liaise with international standard-setting bodies by Q4 2018.
- To foster interoperability, the Commission will support industry-led efforts to develop, by Q2 2019, standardized application programming interfaces compliant with the Payment Services Directive and the General Data Protection Regulation.
- To facilitate the emergence of innovative technologies, the ESAs are asked to facilitate supervisory cooperation, by coordinating and sharing information on innovative technologies and on establishing

and operating innovation hubs and regulatory sandboxes. The ESAs are also asked to ensure consistency of supervisory practices. The Commission will provide a report on best practices for regulatory sandboxes by Q1 2019.

- To remove barriers to technological innovation in the financial sector and support its uptake, the Commission will establish an Expert Group to identify any unnecessary regulatory obstacles by Q2 2019.
- To facilitate use of cloud services, the Commission invites stakeholders to develop cross-sectoral self-regulatory codes of conduct to facilitate switching between cloud service providers by Q2 2018 and asks the ESAs to examine whether there is a need for new or additional guidelines on outsourcing to cloud service providers by Q1 2019. The Commission will encourage and facilitate the development of standard contractual clauses for cloud outsourcing by financial institutions by Q2 2019.
- To further the work on harnessing the potential of blockchain, the Commission will continue to work on a comprehensive strategy on distributed ledger technology and blockchain addressing all sectors of the economy. The Commission launched the EU Blockchain Forum and Observatory in February 2018, to assist in tackling difficulties arising from the use of blockchain, such as disintermediation, trust, security and traceability. The Forum will support cross-border cooperation on practical use cases and be an open forum for discussing and developing new ideas. In Q2 2018, the Commission also intends to consult on the digitization of regulated information about companies listed on EU regulated markets. That consultation will include the possible implementation of a European Financial Transparency Gateway based on distributed ledger technology.
- To improve knowledge of FinTech among regulators, the Commission proposes to establish and host an EU FinTech lab to provide training to regulators and supervisors and share knowledge on new technologies via demonstrations, expert discussions and workshops. From Q2 2018, the lab will meet four times per year.
- To increase cyber-security in the EU financial system, the Commission plans a public-private workshop in Q2 2018 to examine how barriers to information-sharing on cyber threats can be removed. The ESAs are asked to evaluate the costs and benefits of developing a cyber resilience testing framework for significant market participants and infrastructures by Q4 2018, and, by Q2 2019, to map the existing supervisory practices across financial sectors around ICT security and governance requirements with a view to producing guidelines or technical advice on regulatory changes where appropriate.

The Communication and the Workplan are available at: https://ec.europa.eu/info/sites/info/files/180308-action-plan-fintech_en.pdf and <http://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-109-F1-EN-ANNEX-1-PART-1.PDF>, the FAQs are available at: http://europa.eu/rapid/press-release_MEMO-18-1406_en.htm, the factsheet is available at: https://ec.europa.eu/info/sites/info/files/180308-action-plan-fintech-factsheet_en.pdf, the Commission press release is available at: http://europa.eu/rapid/press-release_IP-18-1403_en.htm and the Commission's March 2017 consultation and summary of responses are available at: https://ec.europa.eu/info/sites/info/files/2017-fintech-consultation-document_en_0.pdf and https://ec.europa.eu/info/sites/info/files/2017-fintech-summary-of-responses_en.pdf.

European Commission Proposes Regulating Cross-Border Crowdfunding Service Providers

On March 8, 2018, the European Commission published a proposed Regulation on European Crowdfunding Service Providers for Business. The proposed ECSP Regulation is part of the EU Capital Markets Union initiative and the Commission's FinTech Action Plan. It aims to increase access to finance through crowdfunding for innovative companies, start-ups and SMEs.

The Commission is seeking to introduce an “EU label for crowdfunding service providers” which would be authorized and supervised by the European Securities and Markets Authority and able to passport their services across the EU. Currently, different EU Member States apply different levels of regulatory requirements to CSPs. Some Member States require CSPs to comply with onerous obligations under the Markets in Financial Instruments package and some apply more lenient regimes, while others allow CSPs to benefit from exemptions and remain unregulated. The Commission’s view is that this divergence hampers the potential scaling-up of crowdfunding activity, because CSPs need to comply with different legal and regulatory requirements and adjust their business models accordingly if they want to provide services in more than one EU Member State. The Commission is not proposing that current national frameworks be repealed. Instead, those frameworks can continue to exist, which will allow CSPs to choose to either provide or continue providing services on a domestic basis under national laws or to provide services under the proposed ECSP Regulation. However, the Commission is proposing that the MiFID II Directive be amended to exclude CSPs from its obligations.

The proposed ECSP Regulation sets out the requirements for CSPs wishing to benefit from using the ECSP passport. The requirements cover authorization and ongoing supervision by ESMA, prudential management, conflicts of interest, investor protection, transparency and marketing communications. Furthermore, the proposed ECSP Regulation requires all payments for crowdfunding transactions to take place through entities authorized under the PSD, which will bring such payments within scope of the EU’s Fourth Anti-Money Laundering Directive. There are also provisions relating to ESMA’s supervisory powers and the imposition of sanctions and administrative fines.

The proposed ECSP Regulation is now subject to debate between the European Parliament and the Council of the European Union. The Commission is proposing that the ECSP Regulation would apply 12 months after it is finalized and published in the Official Journal of the European Union. As a regulation, it would apply directly across the EU.

The proposed ECSP Regulation is available at: https://ec.europa.eu/info/banking-and-finance-website-notice-users_en and the proposed MiFID II amendment is available at: <http://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-99-F1-EN-MAIN-PART-1.PDF>.

Securities

European Commission Calls for Acceleration of Completion of the Capital Markets Union

On March 8, 2018, the European Commission published a Communication on completing the Capital Markets Union by 2019. The Communication confirms the Commission’s commitment to completing the CMU by mid-2019 and announces the publication of the FinTech Action Plan, including a proposed Regulation on Crowdfunding, and the Sustainable Finance Action Plan. Legislative proposals on covered bonds, the cross-border distribution of collective investment funds and the law applicable to third-party effects of assignment are expected to be published on March 12, 2018. In May 2018, the Commission intends to publish a proposed Directive on credit servicers, credit purchasers and the recovery of collateral as well as impact assessments on the SME listing regime and the resolution of investment disputes.

The Commission states that completion of the CMU is more urgent due to the impending exit by the U.K. from the EU because the U.K. is currently the EU’s largest financial centre. The Commission notes that an effective CMU will need to “open-up markets to give better access to finance for EU businesses and more and innovative investment opportunities for savers.” The Commission calls for the EU co-legislators to accelerate finalization of other CMU-related legislation which the Commission has already proposed. These include the

proposed enhancements to the powers of the European Supervisory Authorities, the heightened EU supervision of CCPs and the new prudential regime for investment firms.

The European Council will assess progress on achieving the CMU by 2019 on March 22 and 23, 2018.

The Communication and Annex to the Communication are available at:

<http://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-114-F1-EN-MAIN-PART-1.PDF> and

<http://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-114-F1-EN-ANNEX-1-PART-1.PDF>.

The proposed Regulation on European Crowdfunding Service Providers is available at:

<http://finreg.shearman.com/european-commission-proposed-legislation-to-regul> and the FinTech Action Plan is available at: <http://finreg.shearman.com/european-commission-outlines-its-action-plan-for->.

International Standards Body Proposes Recommendations for Trading Venues on Managing Extreme Market Volatility

On March 7, 2018, the International Organization of Securities Commissions launched a consultation on proposed recommendations for trading venues and their regulators to consider when implementing, operating and monitoring volatility control mechanisms to preserve orderly trading. The consultation supports IOSCO's objective of ensuring that markets are fair, efficient and transparent and focuses on automatic volatility interruptions and mechanisms to halt trading or reject orders.

In 2011, IOSCO published the report, "Regulatory Issues Raised by the Impact of Technological Changes on Market Integrity and Efficiency." The report included a recommendation for regulators to consider the extent to which trading venues should be required to have volatility control mechanisms in place to manage risks and prevent market disruption due to sudden price movements. Since the publication of the 2011 report, the markets have become more complex and interconnected due to technological advances. In addition, recent volatility events have impacted the securities markets, often with an event in one jurisdiction impacting the markets in another jurisdiction. For example, the "flash crash" on May 6, 2010 impacted the U.S. equity and futures markets as well as the Canadian equity market. As a result of all of these developments, IOSCO undertook a review of the measures used by trading venues and regulatory authorities to manage the impact of extreme volatility and preserve orderly trading with a view to assessing whether the 2011 recommendation should be enhanced.

IOSCO found that trading venues and regulatory authorities globally recognize the importance of volatility control mechanisms and is proposing eight recommendations to assist them in implementing those mechanisms. The recommendations cover, among others, the: (i) need to establish, monitor and maintain appropriate mechanisms during trading hours and to ensure that the mechanisms are appropriately calibrated; (ii) need for regulatory authorities to consider what information they may need to effectively monitor the overall framework in their jurisdiction; and (iii) communication of information by trading venues to their regulators, market participants and other trading venues, including issues that may occur where information is shared cross-border.

IOSCO is seeking feedback on the proposed recommendations. Responses should be provided by May 6, 2018.

The consultation paper is available at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD594.pdf>.

Shadow Banking

Financial Stability Board's Reporting Guidelines for Global Securities Financing Data Collection

On March 5, 2018, the FSB published final Reporting Guidelines for implementing the November 2015 Global FSB Securities Financing Data Standards, which set out the standards and processes for global securities financing data collection, aggregation and reporting by national regulators for financial stability purposes. The standards, among other things, define the data elements for repurchase agreements, securities lending and margin lending and set out recommendations for national regulators on the collection of data from market participants, so that timely and comprehensive visibility into trends and developments in these markets can be obtained. National regulators must report in USD to the Bank for International Settlements, acting as the global aggregator.

The Reporting Guidelines set out the information to be collected (referred to as measures), the classification of the measures (referred to as characteristics) and the procedures for validating the data. The Reporting Guidelines include four annexes: Annex 1 contains the reporting template, Annex 2 shows which set of tables should be reported (this is to be finalized once reporting authorities for each jurisdiction are determined), Annex 3 provides the scope of securities financing transactions included in the reporting obligation and Annex 4 has examples of how transactions should be reported using the Guidelines.

The Reporting Guidelines are available at: <http://www.fsb.org/wp-content/uploads/P050318-3.pdf> and the 2015 Securities Financing Data Standards are available at: <http://www.fsb.org/wp-content/uploads/FSB-Standards-for-Global-Securities-Financing-Data-Collection.pdf>.

Upcoming Events

March 15, 2018: U.S. House Financial Services Committee, Terrorism and Illicit Finance subcommittee hearing – After the Breach: the Monetization and Illicit Use of Stolen Data.

March 22, 2018: U.K. Government's second annual International Fintech Conference

March 22, 2018: European Commission high-level conference on financing sustainable growth

April 24, 2018: ECB public hearing (via telephone conference) on its consultation on draft guides to ICAAP and ILAAP

April 25, 2018: EBA public hearing on draft EBA Guidelines on Management of Non-Performing and Forborne Exposures

May 31, 2018: BoE and Centre for Economic Policy Research conference on competition and regulation in financial markets

Upcoming Consultation Deadlines

March 15, 2018: Federal Reserve Board's proposed guidance clarifying risk management supervisory expectations for large financial institutions

March 15, 2018: EBA Discussion Paper on EU implementation of the revised market risk and counterparty credit risk frameworks

March 15, 2018: EBA consultation on draft RTS for risk retention under STS Regulation

March 15, 2018: EBA consultation on draft RTS on homogeneity of underlying exposures in STS securitizations under the STS Regulation

March 19, 2018: ESMA consultation on draft technical standards on the content and format of the “Simple, Transparent and Standardized” notification under the STS Regulation

March 19, 2018: ESMA consultation on draft technical standards on disclosure requirements, operational standards, and access conditions under the STS Regulation

March 19, 2018: ESMA consultation on draft technical standards on third-party firms providing STS verification services under the STS Regulation

March 22, 2018: CMA Working Paper on its investment consultancy services investigation

March 23, 2018: Basel Committee consultation on revised principles for supervisory and bank stress testing

March 23, 2018: FCA consultation on Handbook changes for implementation of the Money Market Funds Regulation

March 27, 2018: CFPB’s Civil Investigative Demands request for information

April 3, 2018: BoE consultation on new incident reporting rules for CCPs

April 9, 2018: PRA consultation on MREL reporting requirements

May 4, 2018: IOSCO Consultation - Conflicts of interest and associated conduct risks during the equity capital raising process

May 4, 2018: ECB consultation on draft guides to ICAAP and ILAAP

May 6, 2018: IOSCO consultation on proposed recommendations for trading venues and their regulators when implementing, operating and monitoring volatility control mechanisms to preserve orderly trading

May 7, 2018: PRA consultation on governance and risk management for algorithmic trading

May 16, 2018: PRA consultation on guidance on the eligibility of guarantees as unfunded credit protection for capital requirement purposes

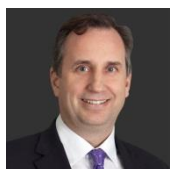
May 25, 2018: Basel Committee consultation on revisions to Pillar 3 Framework

June 8, 2018: EBA consultation on draft EBA Guidelines on Management of Non-Performing and Forborne Exposures

June 20, 2018: FCA consultation on Model Driven Machine Executable Regulatory Reporting

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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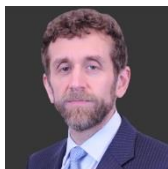
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