

# 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.

[Click here](#) if you wish to access our Financial Regulatory Developments website.

Our latest quarterly Governance & Securities Update for Corporates is available [here](#).

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## AML/CTF, Sanctions and Insider Trading

### **US Federal Financial Regulatory Agencies Release Joint Statement on Sharing Bank Secrecy Act Resources**

On October 3, 2018, the U.S. Federal Reserve, FinCEN, OCC, FDIC and NCUA released an interagency statement regarding the sharing of Bank Secrecy Act resources among banks through collaborative arrangements intended to improve efficiency, reduce costs and benefit from specialized expertise by pooling resources among banks. The agencies stated that these types of collaborative arrangements may be more suitable for community banks with smaller footprints and less complex risk profiles. The agencies also provided examples of how these collaborative agreements may be effectively used in the BSA context, such as developing policies and procedures, processes and reports; providing for independent testing of BSA/AML programs; and leveraging pooled resources to provide BSA/AML training. The agencies also stated that special care and consideration should be taken with respect to collaborative arrangements to ensure proper evaluation of risk considerations and corresponding mitigation and that sharing of a BSA officer among banks may be problematic.

The agencies noted that the statement did not apply to collaborative arrangements formed for sharing information pursuant to Section 314(b) of the USA PATRIOT Act, nor are banks participating in a collaborative arrangement an association for purposes of Section 314(b) of the USA PATRIOT Act.

The full text of the interagency statement is available at: <https://www.occ.treas.gov/news-issuances/news-releases/2018/nr-ia-2018-107a.pdf>.

### **Financial Action Task Force Clarifies Virtual Asset Regulation**

On October 19, 2018, the Financial Action Task Force published the outcomes of its plenary on October 17-19, 2018. The FATF considered key issues such as the operations and streamlining of the FATF, major and other strategic initiatives and mutual evaluations.

One of the major initiatives covered by the plenary was the regulation of virtual assets. The G20 Finance Ministers & Central Bank Governors communiqué following their July 2018 Buenos Aires meeting called on the FATF to clarify, by October 2018, how its global anti-money laundering and counter-terrorist financing standards apply to crypto assets. At its October plenary, the FATF adopted amendments to the FATF Recommendations and Glossary at the plenary and issued a statement on the regulation of virtual assets. The FATF has done this to clarify that its standards apply to exchanges, wallet providers and providers of financial services for Initial Coin Offerings. Jurisdictions should therefore ensure that virtual asset service providers are subject to AML/CTF regulations. However, jurisdictions are able to choose which category of regulated entity virtual asset service providers should fall into. Jurisdictions that opt to prohibit virtual assets and the activities related to them would not need to implement any AML/CTF measures. The FATF also clarifies that the FATF Recommendations require monitoring and supervision for AML/CTF purposes only and that it is not implying that virtual asset service providers should be regulated for any other purpose, such as investor protection or financial stability. The FATF statement confirms that the FATF will update its guidance on a risk-based approach to regulating virtual asset service providers as well as the guidance for authorities on identifying and investigating potentially illicit virtual asset activities. The FATF will also review the scope of activities of the Recommendations and Glossary in the next year and may update these if necessary.

Another major issue discussed by the plenary was CTF. The plenary confirmed that CTF continues to be a priority under the FATF's presidency and it agreed to focus on: (i) the effective investigation and prosecution of financing terrorism; (ii) developing guidance to assist countries to better understand their terrorist financing

risks; and (iii) enhancing training across the FATF global network on terrorist financing risks, asset freezing, information sharing and disrupting terrorist financing.

The FATF plenary also considered its work on proliferation financing, another priority of the FATF's presidency. The FATF has begun a project considering whether to expand its Recommendations applicable to proliferation financing, enhancing implementation of existing obligations and developing best practices to counter proliferation financing. The FATF outcomes from the plenary indicate that FATF is exploring whether there is support for revising the Recommendations before it prepares any detailed revision proposals.

The FATF plenary also covered future work on digital identification. The FATF will prepare guidance on digital identity, which will include endorsement by national authorities as a test for acceptability of digital identity. The FATF intends to finalize the guidance by June 2019 following consultation with private sector experts.

The FATF plenary outcomes are available at: <http://www.fatf-gafi.org/publications/fatfgeneral/documents/outcomes-plenary-october-2018.html>, the statement on regulation of virtual assets is available at: <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/regulation-virtual-assets.html> and the FATF Recommendations are available at: <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>.

## Bank Prudential Regulation & Regulatory Capital

### US FDIC Seeks to Improve Communication, Transparency and Accountability

On October 5, 2018, the U.S. FDIC published a notice and request for comment seeking input on how to improve the efficacy, efficiency and transparency of the agency's communication with insured depository institutions. The notice outlines current forms of communication, including, regulations, policies, procedures and guidance; news and updates; industry data, educational materials and outreach; general communication; and direct communication. The notice requests comment with respect to the efficiency, ease of access and content of communications with insured financial institutions. Comments to the FDIC's notice are due no later than December 4, 2018.

Relatedly, on October 3, 2018, FDIC Chairman Jelena McWilliams discussed a transparency and accountability initiative, "Trust through Transparency," being undertaken by the agency. Chairman McWilliams noted that trust and transparency play central roles in the mission of the FDIC. To further these central tenants, Chairman McWilliams highlighted that the FDIC will begin publishing performance metrics in areas such as turnaround time for examinations and applications, and will also include guidelines and decisions related to appeals of material supervisory determinations and deposit insurance assessments. The FDIC will also publish policies and procedures, including with respect to how applications are processed and evaluated.

Finally, Chairman McWilliams announced that the FDIC has begun a review of information that the agency has deemed confidential under the Freedom of Information Act, and is reviewing its FOIA process and how exemptions are applied.

The full text of the FDIC notice is available at: <https://www.gpo.gov/fdsys/pkg/FR-2018-10-05/pdf/2018-21704.pdf>.

The full text of Chairman McWilliams's remarks is available at: <https://www.fdic.gov/news/news/speeches/spoct0318.html>.

### **UK Prudential Regulator Consults on Managing Financial Risks from Climate Change**

On October 15, 2018, the U.K. PRA published a consultation paper on a draft Supervisory Statement on managing the financial risks from climate change. The consultation follows the PRA's publication in September 2018 of its report "Transition in thinking: The impact of climate change on the U.K. banking sector." The consultation paper is relevant to banks, insurers, re-insurers, building societies and PRA-designated investment firms. The PRA wants firms to take a strategic approach to financial risks from climate change by taking into account current and credible risks and identifying actions needed now to mitigate existing and future risks.

The draft Supervisory Statement states that the PRA expects a firm's response to the financial risks from climate change to be proportionate to the nature, scale and complexity of its business. The draft Supervisory Statement sets out the PRA's expectations on how firms:

- I. Embed into their governance arrangements the consideration of financial risks from climate change, including by identifying and allocating responsibility for managing financial risks from climate change to relevant Senior Manager Functions;
- II. Address financial risks from climate change in their existing risk management frameworks and evidence this in their risk management policies, management information and board risk reports;
- III. Use long-term scenario analysis to inform their strategic planning, risk assessment and risk identification and how the scenario analysis should address a range of outcomes relating to different transition paths to a low carbon economy; and
- IV. Should consider whether additional disclosures are required to improve the transparency of the firm's approach to financial risks from climate change and whether to take into account the recommendations of the Task Force on Climate-related Financial Disclosure.

The PRA and the FCA will establish a Climate Financial Risk Forum by the end of November 2018. The Forum will comprise representatives from industry, technical experts and other stakeholders and will aim to encourage financial sector approaches to managing the financial risks from climate change as well as support green finance.

The FCA has published a Discussion Paper on climate change and green finance, asking for views on potential changes to its regulatory approach to these issues and setting out specific action that the FCA intends to take in the short term in four focus areas—capital markets disclosures, public reporting requirements, green finance and pensions.

The PRA's consultation closes on January 15, 2019.

The PRA's consultation paper is available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp2318.pdf> and details of the PRA's report on climate change and the U.K. banking sector is available at: <https://finreg.shearman.com/prudential-regulator-reports-on-climate-related-f>.

### **Basel Committee on Banking Supervision Highlights Concerns About Leverage Ratio "Window-Dressing"**

On October 18, 2018, the Basel Committee issued a statement on leverage ratio "window-dressing" behavior by banks.

To comply with the Basel III leverage ratio standard, among other things, banks are required to publicly disclose their leverage ratio, calculated on a quarter-end basis, or more frequently in certain jurisdictions. The Basel Committee has noted what may be a tendency in banks to engage in so-called window-dressing by temporarily reducing transaction volumes around key reference dates, which has the effect of allowing banks to report and publicly disclose higher leverage ratios.

The Basel Committee states that window dressing is unacceptable as it undermines the policy objectives of the leverage ratio standard and risks disrupting the operations of financial markets. The Basel Committee calls on banks to desist from undertaking transactions for window-dressing purposes and makes several suggestions for actions by supervisors to address these concerns. These include increasing the frequency of reporting and supervisory monitoring, focused supervisory inspections and/or additional public disclosures. The Basel Committee will continue to monitor potential window-dressing behavior and may consider adjusting the Pillar 1 minimum capital requirements and/or Pillar 3 disclosure requirements if necessary.

The Basel Committee's Statement is available at: [https://www.bis.org/publ/bcbs\\_nl20.htm](https://www.bis.org/publ/bcbs_nl20.htm).

### **Basel Committee on Banking Supervision Consults on Leverage Ratio Treatment of Client-Cleared Derivatives**

On October 18, 2018, the Basel Committee published a consultation paper entitled "Leverage ratio treatment of client-cleared derivatives," seeking views from stakeholders on whether a targeted and limited revision of the leverage ratio exposure measure is warranted with respect to the treatment of client-cleared derivatives.

On the publication of the finalized Basel III framework in December 2017, the Basel Committee stated that it would continue to monitor the impact of the Basel III leverage ratio's treatment of client-cleared derivative transactions. It confirmed that it would review the impact of the leverage ratio on banks' provision of clearing services and any consequent impact on the resilience of central counterparty clearing. The Basel Committee has completed its review and is of the view that only a strong evidence-based case would justify making revisions to the current leverage ratio treatment of client-cleared derivatives.

In the consultation paper, the Basel Committee invites stakeholders to consider two possible options for revision: (i) a treatment that would allow amounts of cash and non-cash initial margin received from a client to offset the potential future exposure of derivatives centrally cleared on the client's behalf; and (ii) a treatment that would align the treatment of client-cleared derivatives with the measurement as determined per the standardized approach to measuring counterparty credit risk exposures for risk-based capital requirements. The consultation paper includes drafts of the revisions that would be made to the leverage ratio standard to effect these changes.

Additionally, the Basel Committee seeks views on the merit of requiring that any forms of initial margin to be made eligible for offsetting client-cleared derivative exposures should be made subject to segregation criteria so that those amounts would be available in the event of a client's default.

Comments on the consultation are invited by January 16, 2019. The Basel Committee intends to publish its conclusions once it has reviewed the consultation responses.

The consultation is available at: <https://www.bis.org/bcbs/publ/d451.pdf>.

### **Basel Committee on Banking Supervision Publishes Updated Stress Testing Principles**

On October 17, 2018, the Basel Committee published a final version of its Stress Testing Principles, which replace its 2009 Principles for Stress Testing and Supervision. The Basel Committee conducted a review of the 2009 Principles during 2017 and launched a consultation on proposed revisions in December 2017.

The new principles reflect the growth in importance of stress testing since the 2009 version was produced and its evolution into a critical element of risk management for banks as well as a core tool for both banking supervisors and macroprudential authorities.

The new principles are also set at a higher level than the previous version, so that the principles can apply across many banks and jurisdictions and so that they are robust to developments in stress testing practices. The principles focus on the core elements of stress testing frameworks, including the objectives, governance,

policies, processes, methodology, resources and documentation that guide stress testing. Each principle is followed by a short description of considerations that are equally relevant for banks and authorities, along with additional considerations for banks or authorities.

The Stress Testing Principles are available at: <https://www.bis.org/bcbs/publ/d450.pdf>.

## Compensation

### **UK Prudential Regulator Issues Update to Level One Firms on Supervising Remuneration Compliance**

On October 18, 2018, the U.K. PRA published a “Dear Remuneration Committee Chair” letter that it has sent to Remuneration Committee Chairs of proportionality Level One firms (that is, banks, building societies and PRA-designated investment firms with relevant total assets exceeding £50 billion as at the relevant date) ahead of its annual review of remuneration policies and practices.

In the letter, the PRA explains that, with effect from the 2018/19 remuneration review, the PRA will no longer provide a non-objection statement to the proposed communication or distribution of variable remuneration awards by Level One firms. The PRA states that its oversight of Level One firms’ remuneration practices will increasingly draw on the principles for governance set out in the Senior Managers and Certification Regime, placing more emphasis on how the Chairs of firms Remuneration Committees discharge their responsibilities under the SM&CR and on how Remuneration Committees carry out their role of oversight and independent challenge under the PRA’s Remuneration Rules.

Going forward, Level One firms can continue to expect engagement throughout the year from their PRA supervisors on their remuneration policies, practices and processes and, where needed, feedback on issues the firm should address. Level One firms should submit a remuneration policy statement and quantitative data tables three months ahead of the firm’s preferred final feedback date (that is, the date previously referred to as the “non-objection date”), and an update to the figures at least two weeks before the final feedback date.

The Letter is available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/letter/2018/change-to-supervising-remuneration-compliance-for-level-one-firms.pdf>.

## Competition

### **UK Conduct Regulator Publishes Finalized Approach to Competition**

On October 15, 2018, the U.K. FCA published its finalized Approach to Competition, following feedback to its consultation between December 2017 and March 2018 on a draft of its approach document. The FCA’s Approach to Competition should be read alongside the FCA Mission, which was first published in October 2016.

In the approach document, the FCA outlines its “competition objective” of promoting effective competition in the interests of consumers in particular markets and its “competition duty,” which requires it to discharge its general functions in a way that promotes effective competition in the interests of consumers. It then explains how it advances its competition objective by: (i) using market studies to examine market structures and dynamics and imposing rule changes to improve consumer outcomes if necessary; (ii) using its powers under the Competition Act 1998 to investigate anti-competitive behavior under U.K. and EU law; and (iii) implementing regulation with the aim of supporting competition in the interests of consumers.

The approach document provides details of how the four-step decision-making framework outlined in its Mission applies in the context of its competition work. Due to the complexity of competition issues, the FCA explains that it uses a number of benchmarks to identify potential harm. Having established a potential for harm, the FCA has a range of diagnostic tools at its disposal for investigating further. Proposed remedies to competition problems will follow on from the type of investigation conducted. The approach document concludes with an explanation of how the FCA evaluates the impact of its interventions and the outcomes in markets.

The Approach to Competition is available at: <https://www.fca.org.uk/publication/corporate/our-approach-competition-final-report-feedback-statement.pdf> and the FCA Mission is available at: <https://www.fca.org.uk/publications/corporate-documents/our-mission>.

## Corporate Governance

### **UK Regulator Considers Potential Regulatory Refinements for Climate Change**

On October 15, 2018, the U.K. FCA published a Discussion Paper on climate change and green finance in which it calls for comment on potential changes to its regulatory approach in these areas. The Discussion Paper sets out specific action that the FCA intends to take in the short term in four focus areas—capital markets disclosures, public reporting requirements, green finance and pensions.

First, the FCA is considering whether the regulatory approach to disclosures by issuers in the capital markets should be amended. In particular, the FCA is asking for comments on: (i) the difficulties that issuers may have in determining materiality of climate-related issues such that a specific disclosure would be warranted; (ii) whether investors would benefit from greater comparability of disclosures; and (iii) whether further prescribed requirements on climate-related disclosures should be introduced to facilitate more consistent disclosures by issuers. This final point includes whether the introduction of a “comply or explain” approach to the Task Force on Climate-related Disclosures would facilitate more effective markets.

Second, the FCA is proposing to introduce a requirement for financial institutions to report publicly on how they manage climate-related risks to their customers and operations. Feedback on how firms are currently managing these risks and the transition to a low-carbon economy would assist the FCA in developing the content requirements for the proposed reports. The FCA is also requesting comments on which regulated firms or sectors should fall within scope of the proposed reporting requirement.

Third, the Discussion Paper sets out the FCA’s thinking on ways to facilitate the use of innovative models in green finance and ethical investing. One way the FCA suggests that this could be achieved is through the recently established Global Financial Innovation Network. This is a collaboration between eleven financial regulators which aims to facilitate efficient interaction and the potential to scale up new ideas in the FinTech space. Separately, the FCA is setting a Green FinTech Challenge to industry which will call on firms to develop innovative financial products and services to aid the U.K.’s transition to a low carbon economy. Details of how firms can apply to participate in the Challenge will be published on October 19, 2018.

Finally, the FCA confirms in the Discussion Paper that it will present a package of proposals in Q1 2019 covering: (i) how it intends to address the Law Commission’s recent recommendations on Pension Funds and Social Investment to implement rule changes requiring Independent Governance Committees to report on their firm’s relevant policies; and (ii) proposed guidance for providers of workplace personal pension schemes.

The FCA and the PRA will establish a Climate Financial Risk Forum by the end of November 2018. The Forum will comprise representatives from industry, technical experts and other stakeholders and will aim to encourage financial sector approaches to managing the financial risks from climate change as well as support innovation in green finance.

The PRA has also published a consultation relating to climate change. The PRA seeks feedback on a draft Supervisory Statement which sets out its expectations of firms in managing the financial risks from climate change.

The FCA's consultation closes on January 31, 2019.

The FCA's Discussion Paper is available at: <https://www.fca.org.uk/publication/discussion/dp18-08.pdf> and details of the proposed GFIN is available at: <https://finreg.shearman.com/regulators-unveil-plans-to-launch-global-financia>.

## Enforcement

### US Securities and Exchange Commission Halts Fraudulent Initial Coin Offering

On October 11, 2018, the SEC announced that it halted a planned initial coin offering and related pre-ICO sales by Blockvest LLC and its founder, Reginald Buddy Ringgold, III. In seeking an emergency court order, the SEC alleged that Blockvest had falsely claimed that it and its affiliates received regulatory approval from various agencies, including the SEC and a fake agency called the "Blockchain Exchange Commission." Blockvest and Ringgold also allegedly used the National Futures Association seal in making false claims about their regulated status, even after the NFA sent them a cease-and-desist letter for doing so.

The SEC also charged that Blockvest and Ringgold violated the antifraud and securities registration provisions of the federal securities law. The SEC sought injunctions, return of ill-gotten gains plus interest and penalties, and a bar against Ringgold participating in any future offering of securities.

The Chief of the SEC Enforcement Division's Cyber Unit, Robert A. Cohen, said that "the SEC does not endorse investment products and investors should be highly skeptical of any claims suggesting otherwise." In addition, the SEC's Office of Investor Education and Advocacy and the U.S. Commodity Futures Trading Commission's Office of Customer Education and Outreach jointly issued an investor alert on the use of false claims regarding SEC and CFTC endorsements.

The SEC's announcement is available at: <https://www.sec.gov/news/press-release/2018-232>.

## FinTech

### US Securities and Exchange Commission Launches Strategic Hub for Innovation and Financial Technology

On October 18, 2018, the SEC launched its Strategic Hub for Innovation and Financial Technology (FinHub), designed to engage investors and market participants on FinTech issues and initiatives.

Valerie A. Szczepanik, the SEC's Senior Advisor for Digital Assets and Innovation and Associate Director in the SEC's Division of Corporation Finance, will lead FinHub, which will focus on topics such as distributed ledger technology (DLT) and digital assets, automated investment advice, digital marketplace financing, artificial intelligence and machine learning. The SEC's various divisions will assign staff with expertise in the FinTech space. inHub will replace and build on the efforts of several of the SEC's internal FinTech working groups.

The SEC said that FinHub will provide a platform for market participants to engage directly with SEC staff on innovations and technological developments, publicize the SEC's FinTech-related activity on the FinHub webpage, host FinTech events (including a forum on DLT and digital assets planned for 2019) and act as a resource for SEC staff to acquire and disseminate FinTech-related information within the agency. Further, it will serve as the SEC's liaison to domestic and global regulators in respect of innovations in financial, regulatory and supervisory systems.

In a press release announcing the launch, SEC Chairman Jay Clayton said that the FinHub will provide "a central point of focus for [the SEC's] efforts to monitor and engage in innovations in the securities markets that hold promise, but which also require a flexible, prompt regulatory response," and Szczepanik said that she hopes the platform will "provide a clear path for entrepreneurs, developers, and their advisers to engage with SEC staff, seek input, and test ideas."

The FinHub webpage is available at: <https://www.sec.gov/finhub> and the press release is available at: <https://www.sec.gov/news/press-release/2018-240>.

### **US Commissioner Quintenz Speaks on Smart Contract Regulation**

On October 16, 2018, CFTC Commissioner Brian Quintenz gave a wide-ranging speech at the GITEX Technology Week Conference in Dubai, addressing a number of key issues faced by the CFTC in considering how to regulate smart contracts. While he acknowledged that there are still many questions to be answered on smart contract regulation, Commissioner Quintenz expressed a number of important views that should make market participants pause before assuming that activity in smart contracts will avoid CFTC scrutiny.

Commissioner Quintenz explained that, in his view, the first step the CFTC should take when considering a smart contract is to understand the basic nature of the contract and whether it is within the CFTC's jurisdiction. For example, is the contract a product that must be traded on an exchange? Does the protocol itself perform the functions of an exchange, which may trigger registration requirements? While the answers will of course be different for every smart contract, Commissioner Quintenz made clear that he believes existing CFTC regulations can and should be applied to such contracts where appropriate.

Another question Commissioner Quintenz addressed is the question of who is responsible for ensuring that certain smart contract-based activities comply with the law. He explained that it is not only users of smart contracts who may be subject to CFTC regulation, but also those who develop smart contracts. The key issue here, Commissioner Quintenz believes, is whether smart contract code developers, when creating the code, could reasonably foresee that it would likely be used by U.S. persons in a way that would violate CFTC regulations. If this were the case, he believes the CFTC would have the ability to prosecute those individuals for aiding and abetting violations of CFTC regulations. Commissioner Quintenz acknowledged the fact that individual users may continue to use the software to execute their own contracts that are in violation of the CFTC's regulations following a CFTC enforcement action against the purveyor of the underlying code. However, Commissioner Quintenz noted that pursuing enforcement actions against individual users could prove inefficient and ineffective, which represents another regulatory challenge for the CFTC.

The central theme of Commissioner Quintenz's speech, however, was to encourage those engaging in smart contracts (either as developers, users or otherwise) to engage with the CFTC whenever there is even a question of whether CFTC regulations may be implicated. It is clear that he wants the CFTC to stay abreast of developments, and recognizes that their best bet to do so is with proactive engagement from the industry. Indeed, he specifically encouraged developers of smart contract code to engage with the CFTC through its LabCFTC initiative to determine if or how the code's product may fit within the CFTC's regulatory framework. And he also raised the possibility of rethinking the CFTC's regulations or approach to enforcement given

these relevant and promising technological developments. Whether that will ultimately happen, and/or whether the CFTC will instead seek to shape the industry primarily through enforcement, is one of the key questions facing the industry, and Commissioner Quintenz recognizes that it is a question that remains unanswered.

The speech is available at: <https://www.cftc.gov/PressRoom/SpeechesTestimony/opaquintenz16>.

### **UK Regulator Launches Green FinTech Challenge**

On October 19, 2018, the U.K. FCA launched the Green FinTech Challenge for firms developing innovative products and services to assist in the U.K.'s transition to a low-carbon economy. The Challenge is part of the FCA's Innovate project. Successful applicants to the challenge will benefit from authorization support, live testing in the regulatory sandbox and FCA guidance. Applications for inclusion in the challenge should be submitted by January 11, 2019 and successful applicants will be notified by the end of Q1 2019. This is the first FinTech challenge run by the FCA and is separate from the FCA's other Innovate services, which should continue to be accessed by firms developing propositions that fall outside the scope of the challenge. Once the challenge is complete, it will consider whether to launch more challenges.

The FCA's Green FinTech Challenge webpage is available at: <https://www.fca.org.uk/firms/fca-innovate/fintech-challenge>.

### **UK Conduct Regulator Issues Feedback Statement on Digital Regulatory Reporting**

On October 17, 2018, the U.K. FCA published a Feedback Statement on the Digital Regulatory Reporting project it began earlier in 2018. The Feedback Statement summarizes the feedback the FCA received from the call for input it published in January 2018 and sets out the FCA's responses.

The FCA is working with the Bank of England in the RegTech sphere to explore ways of using technology to link regulation, compliance procedures and firms' policies and standards together with firms' transactional applications and databases. Most respondents to the FCA's call for input agreed in particular that digital regulatory reporting could bring increased efficiency, among other benefits. Some respondents expressed concerns about costs of implementation and called for a period of overlap were digital regulatory reporting to be introduced. Overall, the FCA is encouraged by the feedback.

The Feedback Statement confirms that participants to a pilot launched in June 2018 to further explore the proof of concept for a move to digital regulatory reporting will publish their findings in a technical paper in Q1 2019. The FCA will continue with workstreams under the project and should a business case be made, it will launch a consultation and a cost benefit analysis. While the FCA is focusing on implementation of digital regulatory reporting in the U.K., it also believes that multinational adoption could bring benefits and is in discussions with its counterparts internationally.

The Feedback Statement (FCA FS 18/2) is available at: <https://www.fca.org.uk/publication/feedback/fs18-02.pdf>, details of the FCA's call for input are available at: <https://finreg.shearman.com/uk-financial-conduct-authority-consults-on-machin> and details of the terms of reference for the project's pilot phase are available at: <https://finreg.shearman.com/uk-conduct-regulatory-outlines-scope-of-digital-r>.

### **UK Conduct Regulator Invites Applications for Cohort Five of Its Regulatory Sandbox**

On October 15, 2018, the U.K. FCA announced that the application window had opened for cohort five of its regulatory sandbox. The FCA announced the successful applicants to the previous cohort in July 2018.

The FCA's sandbox is part of the FCA's Project Innovate, which was launched in 2014. The regulatory sandbox has been in operation since 2016 and provides a controlled environment for firms that satisfy the relevant eligibility criteria to test innovative products and services with real customers.

The deadline for completed applications for cohort five is November 30, 2018.

The FCA webpage is available at: <https://www.fca.org.uk/firms/regulatory-sandbox> and details of the successful applicants to cohort four are available at: <https://finreg.shearman.com/uk-regulator-announces-successful-applicants-to-c>.

## Payment Services

### US Federal Reserve Board Seeks Comment on Facilitating Faster Payments

On October 3, 2018, the U.S. Federal Reserve published a notice and request for comment with respect to potential measures that could be taken to improve the efficiency and speed of payment services, specifically regarding the facilitation of real-time interbank settlement of "faster payments"—a term generally used to convey a future payment and settlement system that is fast, convenient and accessible. The notice highlights that while traditional payment methods, such as checks, ACH payments and credit card transactions have created a payment systems infrastructure that is universal, safe and reliable, this does not necessarily translate into speed and efficiency. The notice suggests that the current system has resulted in a gap between the speed and efficiency of the payment systems infrastructure and user expectations. The notice provides background regarding Federal Reserve Board initiatives associated with faster payments, including its Strategies for Improving the U.S. Payment System initiative and Faster Payments Task Force, provides an overview of the faster payments construct, and introduces potential faster payment models, including deferred net settlement of interbank obligations and real-time gross settlement of interbank obligations. The notice also discusses potential actions that the Federal Reserve Board could undertake to support faster payments, including the development of "24x7x365" real-time interbank settlement and the creation of a liquidity management tool to help promote, support and drive participation in real-time interbank settlement.

The full text of the request for comments is available at:

<https://www.federalreserve.gov/newsevents/pressreleases/files/other20181003a1.pdf>.

## Upcoming Events

November 28-29, 2018: EBA 7th Annual Research Workshop - Reaping the benefits of an integrated EU banking market

## Upcoming Consultation Deadlines

October 25, 2018: ECB consultation on draft Part 2 of the Guide to Assessments of Licence Applications by credit institutions

October 26, 2018: Comment deadline for FDIC proposal to except a capped amount of reciprocal deposits from treatment as brokered deposits

October 26, 2018: EBA consultation on revised ITS on supervisory reporting in line with the Liquidity Coverage Requirement under the CRR

October 27, 2018: FCA consultation on proposed changes to the rules governing P2P platforms

October 29, 2018: CFTC consultation on proposed clearing obligation exemptions for certain financial end users

October 29, 2018: Comment deadline for interim final rule regarding expanded 18-month examination cycle for certain small insured depository institutions and U.S. branches and agencies of foreign banks

November 1, 2018: PRA consultation, Regulatory transactions: Changes to notification and application forms

November 2, 2018: FCA consultation on enforcement powers under the Securitization Regulation

November 2, 2018: FCA discussion paper on the potential introduction of a new duty of care for financial services firms

November 12, 2018: PRA consultation on overlapping Liquidity Reporting templates under new Pillar 2 framework

November 19, 2018: Comment deadline for OCC proposal to permit certain federal savings associations to operate with national bank powers

November 27, 2018: EBA consultation on revised ITS for supervisory reporting under the CRR

December 4, 2018: Deadline for FDIC request for comment with respect to improving communication, transparency and accountability

December 7, 2018: FCA consultation on the temporary permissions regime for EEA firms and investment funds

December 7, 2018: FCA consultation on Brexit-Related Handbook Changes and Binding Technical Standards

December 12, 2018: PRA consultation on revisions to supervisory reporting requirements

December 14, 2018: Deadline for Federal Reserve Board request for comment with respect to facilitating faster payment systems

January 15, 2019: FCA consultation on climate change and green finance

January 16, 2019: Basel Committee consultation on leverage ratio treatment of client-cleared derivatives

January 25, 2019: FCA consultation on open-ended funds and illiquid assets

January 31, 2019: PRA consultation on managing financial risks from climate change

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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