

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

EU Countering Money Laundering by Criminal Law Directive Will Apply From December 2020

On November 12, 2018, the EU Countering Money Laundering by Criminal Law Directive was published in the Official Journal of the European Union. The Directive will complement the Fifth Money Laundering Directive, which was adopted in May 2018.

The U.K., Ireland and Denmark have not adopted the new Directive. In the U.K., this mirrors the approach taken by the U.K. in relation to EU criminal sanctions for market manipulation where it has implemented its own national regime.

The new Directive will enter into force on December 3, 2018. EU member states that have adopted the Directive must transpose the new provisions into national law by December 3, 2020.

The new Directive establishes minimum rules on the definition of criminal offences and sanctions in the area of money laundering. Member states will be required to implement national laws providing for money laundering offences by individuals to be punishable by a maximum term of imprisonment of at least four years. National laws will continue to provide for additional measures, such as fines, temporary or permanent exclusion from public tender procedures, grants and concessions, and national laws will also provide for national courts to take into account any aggravating factors for sentencing.

In addition, the new Directive establishes corporate liability for money laundering in certain circumstances and provides for corporates to face various sanctions, such as exclusion from entitlement to public benefits or aid, temporary or permanent exclusion from public tender procedures, grants and concessions, temporary or permanent disqualification from the practice of commercial activities, placing under judicial supervision, judicial winding-up and temporary or permanent closure of the establishments used for committing the offence.

The new Directive also includes rules for establishing jurisdiction and for cross-border cooperation between member states.

The Directive is available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1673&from=EN>.

Financial Stability Board Progress Report on Addressing Correspondent Banking Decline

On November 16, 2018, the Financial Stability Board published a progress report addressed to the G20 Finance Ministers and Central Bank Governors on the FSB's four-point action plan to assess and address the decline in correspondent banking relationships. The progress report is accompanied by an update to the Correspondent Banking Data Report published by the FSB March 2018. The updated data report includes additional data from July – December 2017 derived from information provided by SWIFT to the FSB, through the intermediation of the National Bank of Belgium. The data report shows a further decline in active correspondent banking relationships in 2017.

The progress report sets out actions taken since the FSB's March 2018 progress report. Actions taken by the FSB since March include:

- I. Data collection and analysis further examining the scale of the issue, its effects and its implications.
- II. Clarifying regulatory expectations, including further work from the Financial Action Task Force and the Basel Committee on Banking Supervision on their guidance.
- III. Domestic capacity-building to improve and build trust in the supervisory and compliance frameworks in jurisdictions that are home to affected respondent banks.

- IV. Strengthening tools for due diligence by correspondent banks, through supporting the implementation of the recommendations in the July 2016 report of the Committee on Payments and Market Infrastructures on correspondent banking.
- V. Monitoring of the implementation of the FSB's 19 recommendations in its March 2018 report on improving remittance service providers' access to banking services.

The FSB states in the progress report that, now that the international components of the correspondent banking action plan are largely in place, the focus of the FSB's Correspondent Banking Coordination Group is now turning to the monitoring of implementation and of developments. Next steps in the continuation of monitoring work are outlined in the progress report.

The progress report is available at: <http://www.fsb.org/wp-content/uploads/P161118-3.pdf>, the updated Correspondent Banking Data Report is available at: <http://www.fsb.org/wp-content/uploads/P161118-2.pdf> and details of the FSB's March 2018 progress report and action plan on remittance service providers' access to banking services are available at: <https://finreg.shearman.com/financial-stability-board-action-plan-on-access-t>.

Bank Prudential Regulation & Regulatory Capital

EU Final Draft Technical Standards on Estimating and Identifying an Economic Downturn in IRB Modelling

On November 16, 2018, the European Banking Authority published final draft Regulatory Technical Standards on the specification of the nature, severity and duration of an economic downturn in accordance with the Capital Requirements Regulation. The aim of the RTS is to ensure that institutions using the Internal Ratings-Based approach to calculating capital requirements can use a well-defined and common specification of the nature, duration and severity of an economic downturn for portfolios relating to comparable types of exposure.

The nature of the economic downturn is defined as a set of relevant economic factors and its severity is specified via the most severe values observed on the relevant economic factors over a given historical period. The duration of an economic downturn is specified using the concept of a "downturn period," namely the period of time where the peaks or troughs, which relate to the most severe values of one or several economic factors, are observed.

The EBA has submitted the final draft RTS to the European Commission for endorsement. Once adopted, the RTS are expected to apply directly across the EU from January 1, 2021.

The EBA is in the process of finalizing related Guidelines on the estimation of loss given default (LGD) appropriate for conditions of an economic downturn. Once finalized, those Guidelines will also apply from January 1, 2021.

The final draft RTS is available at:

http://www.eba.europa.eu/documents/10180/2459703/EBA+BS+2018+xxx+%28Final+draft+RTS+on+economic+downturn%29_final+%28002%29.pdf.

European Central Bank Publishes Final First Chapter of Its Guide to Internal Models

On November 15, 2018, the European Central Bank published the final first chapter of its guide to internal models. The CRD requires the ECB to assess and grant permission for banks directly supervised by the ECB to use internal models for credit risk, counterparty credit risk and market risk. The ECB's guide sets out how the ECB intends to approach the assessment of whether a firm meets the necessary requirements for the permission to be granted. This chapter is on general topics, comprising overarching principles for internal models, implementation of the IRB approach, internal model governance, internal validation and audit, model

use, change management and third-party involvement. The ECB recently consulted on model-specific chapters, including for credit, market and counterparty credit risks.

The ECB notes that the guide may need to be amended if the European Commission adopts a different version of the EBA's final Draft RTS on assessment methodology for the IRB approach.

The guide is available at:

<https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.guidegeneraltopics201811.en.pdf> and the

feedback statement is available at:

https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/internal_models/ssm.guidegeneraltopics_feedbackstatement201811.en.pdf.

European Central Bank Publishes Final Guides for Capital and Liquidity Management

On November 12, 2018, the ECB published two finalized Guides, one on the internal capital adequacy assessment process (ICAAP) and the other on the internal liquidity adequacy assessment process (ILAAP). The ECB consulted on draft versions of the Guides between March and May 2018. The Guides, which are relevant to institutions within the Single Supervisory Mechanism, are designed to assist institutions in strengthening their ICAAPs and ILAAPs and encourage the use of best practices by explaining in greater detail the ECB's expectations.

The ICAAP and ILAAP Guides each set out seven principles that have been derived from the relevant provisions of the Capital Requirements Directive and that will be considered, among other things, by the ECB in the assessment of each institution's ICAAP or ILAAP as part of the Supervisory Review and Evaluation Process. Frequently Asked Questions have also been published alongside the Guides, along with consultation responses received and a feedback statement.

The ECB intends to use the guides to assess significant institutions' ICAAPs and ILAAPs from January 1, 2019.

The ICAAP Guide is available at:

https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.icaap_guide_201811.en.pdf, the ILAAP Guide is

available at: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.ilaap_guide_201811.en.pdf, the

FAQs are available at:

https://www.bankingsupervision.europa.eu/legalframework/publiccons/html/icaap_ilaap_faq.en.html, the

consultation responses are available at:

https://www.bankingsupervision.europa.eu/legalframework/publiccons/html/icaap_ilaap_comments.en.html

and the feedback statement is available at:

https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/icaap_ilaap/ssm.feedbackstatement_201811.en.pdf.

UK Prudential Regulator Finalizes Supervisory Approach for New EU Securitization Framework

On November 15, 2018, the U.K. Prudential Regulation Authority published a Policy Statement setting out its approach to supervision under the new EU securitization framework that will take effect from January 1, 2019. The PRA consulted on its proposals in May 2018. The incoming EU framework consists of: (i) the Securitization Regulation, which imposes general requirements for all EU securitization activity and outlines the criteria and process for designating certain securitizations as "Simple, Transparent and Standardised"; and (ii) revisions to the banking securitization capital framework within the CRD. Respondents to the PRA's consultation on its approach were largely supportive. The PRA has made some changes (outlined in the Policy Statement) to its consultation text in line with comments received.

The PRA will proceed with the policy approach summarized below.

- I. A new Supervisory Statement, “Securitisation: general requirements and capital framework,” is introduced. This sets out the PRA’s approach and expectations relating to: (a) the provisions within the Securitization Regulation that are applicable to all securitizations; (b) firms that intend to sponsor STS Asset Backed Commercial Paper programmes; and (c) incoming securitization capital framework introduced via amendments to CRR. The new Supervisory Statement will take effect on January 1, 2019.
- II. The existing Supervisory Statement “Securitisation,” is amended by changing its title to “Securitisation: Significant Risk Transfer” and by textual changes to reflect the PRA’s approach and expectations in relation to SRT securitization, including the role of firms’ senior management and prudential treatment of excess spread. The amendments also cover aspects of the PRA’s assessment of the commensurate transfer of risk to third parties that is required whenever a reduction in capital requirements is achieved through a securitization via SRT. This supervisory statement takes effect immediately.
- III. The existing Supervisory Statement, “The Internal Capital Adequacy Assessment Process (ICAAP) and the Supervisory Review and Evaluation Process (SREP)” is amended to clarify how firms should assess the appropriateness of different methods in measuring securitization risk and to specify minimum information that should be included in a firm’s ICAAP document. This amended supervisory statement will take effect on January 1, 2019.

The Policy Statement (PRA PS 29/18) is available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2018/ps2918.pdf>, the new supervisory statement, “Securitisation: General requirements and capital framework” (SS10/18) is available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2018/ss1018.pdf>, the updated and renamed supervisory statement, “Securitisation: Significant Risk Transfer” (SS9/13) is available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2018/ss913update-november-2018.pdf> and the updated supervisory statement, “The Internal Capital Adequacy Assessment Process (ICAAP) and the Supervisory Review and Evaluation process (SREP)” (SS31/15) is available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2018/ss3115update-november-2018.pdf>.

UK Prudential Regulator Finalizes Changes to the Leverage Ratio Rules for Ring-Fenced Banks

On November 14, 2018, the PRA published a Policy Statement on applying the U.K. leverage ratio to systemic Ring-fenced Bodies and reflecting the Systemic Risk Buffer. The SRB is one of the elements of the overall capital framework for U.K. banks and building societies. It will be applied by the PRA to individual institutions and introduced at the same time that ring-fencing comes into force in 2019. RFBs are banks that hold more than £25 billion in core deposits. They must separate their core retail banking business from their investment banking business by January 1, 2019.

The Policy Statement concerns firms in scope of the U.K. leverage ratio framework that are also SRB institutions or part of a group containing an SRB institution. The Policy Statement states that the PRA received only one response to its consultation on the proposed changes and that it is not making any changes as result of that feedback. From January 1, 2019, the new rules will:

- I. apply the U.K. leverage ratio framework on a sub-consolidated basis to RFBs in scope;
- II. amend the Additional Leverage Ratio Buffer to reflect the SRB; and
- III. where applicable, expect firms to hold capital on a group consolidated basis to address RFB group risk (this is known as the Leverage Ratio Group Add-on).

The following appendices were published with the Policy Statement:

- IV. Appendix 1: PRA Rulebook: CRR Firms: Leverage Ratio (Amendment) Instrument 2018;
- V. Appendix 2: Update to SS45/15 ‘The UK leverage ratio framework’;
- VI. Appendix 3: Update to SS46/15 ‘UK leverage ratio: instructions for completing data items FSA083 and FSA084’; and

VII. Appendix 4: Update to FSA083 Leverage Ratio Reporting template, and reporting instructions.

The PRA reiterates that it may reassess its implementation of the leverage ratio rules once the Financial Policy Committee has published the outcome of its review into the U.K. leverage ratio framework. The FPC will conduct its review once the revisions to the EU CRD are finalized, so that it can assess the impact of those new requirements on U.K. banks.

The Policy Statement is available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2018/ps2818.pdf> and the appendices to the Policy Statement are available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/uk-leverage-ratio-applying-the-framework-to-systemic-rfbs-and-reflecting-the-srb>.

2018 List of Globally Systemically Important Banks Published

On November 16, 2018, the FSB published the 2018 list of global systemically important banks. Alongside the 2018 G-SIB list, the Basel Committee has published further information relating to its 2018 assessment of G-SIBs, including:

- I. a list of all the banks in the assessment sample;
- II. the denominators of each of the 12 high-level indicators used to calculate the banks' scores;
- III. the 12 high-level indicators for each bank in the sample used to calculate these denominators;
- IV. the cut-off score used to identify G-SIBs in the updated list and the thresholds used to allocate G-SIBs to buckets for the purpose of calculating the specific higher loss absorbency requirements; and
- V. links to disclosures of all banks in the assessment sample.

The Basel Committee assessment was based on its 2013 methodology for identifying G-SIBs. The revised 2018 assessment methodology will apply from 2021, based on end-2020 data and the corresponding higher loss absorbency requirements will apply from January 1, 2023.

The 2018 G-SIB list is available at: <http://www.fsb.org/wp-content/uploads/P161118-1.pdf> and details of the revised assessment framework for G-SIBs are available at: <https://finreg.shearman.com/basel-committee-finalizes-revised-assessment-fram>.

Brexit for Financial Services

EU Legislation Published for Relocation of the European Banking Authority Post-Brexit

On November 16, 2018, a Regulation amending the founding Regulation of the EBA was published in the Official Journal of the European Union. The Amending Regulation amends the EBA Regulation to change the seat of the EBA from London to Paris.

The Amending Regulation enters into force on November 16, 2018 and will take effect on March 30, 2019.

The Amending Regulation (EU) 2018/1717 is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1717&from=EN>.

Draft EU-UK Withdrawal Agreement Published

On November 14, 2018, the European Commission and the U.K. government published a draft Withdrawal Agreement and an Outline Political Declaration on the framework for the future relationship between the EU and the U.K. The draft Withdrawal Agreement has been agreed between the negotiators and must still be ratified by the U.K. and EU27 leaders. The full Political Declaration on the future relationship is expected by the end of November 2018, provided the draft Withdrawal Agreement is ratified.

The draft Withdrawal Agreement outlines how the U.K. will leave the EU and provides for the previously agreed transition period that would run from March 30, 2019 until December 31, 2020. It also provides for the agreements concerning the future relationship to be negotiated expeditiously with the objective of ensuring that the agreements apply from the end of the transition period. This timeframe is reiterated in the Outline Political Declaration. The negotiators have committed to report regularly on progress made on concluding the agreements governing the future relationship between the EU and the U.K.

The Outline Political Declaration briefly sets out the principles agreed by the negotiators for the future relationship. The Outline confirms that the basis of the future relationship in financial services will be decision-making autonomy and equivalence. The EU and the U.K. are to strive to conclude equivalence assessments before the end of June 2020. The documentation is silent on whether there will be any changes to the processes around equivalency or any expansion to the categories of equivalences under U.K. or EU laws.

Other documents published with the draft Withdrawal Agreement are a Joint Statement on the state of play of the Brexit negotiations, a Withdrawal Agreement explainer and a technical explanatory note on Articles 6-8 on the Northern Ireland Protocol.

The draft Withdrawal Agreement can be viewed at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756374/14_November_Draft_Agreement_on_the_Withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union.pdf, the Joint Statement on the state of play of the negotiations can be viewed at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756377/14_November_Joint_Statement.pdf, the Outline Political Declaration can be viewed at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756378/14_November_Outline_Political_Declaration_on_the_Future_Relationship.pdf and the explanatory text on the Withdrawal Agreement and the Northern Ireland Protocol can be viewed at:

<https://www.gov.uk/government/publications/withdrawal-agreement-explainer-and-technical-explanatory-note-on-articles-6-8-on-the-northern-ireland-protocol>.

European Commission Publishes Aspects of Contingency Plans For No Deal Brexit

On November 13, 2018, the European Commission published a Communication establishing certain contingency action plans in preparation for a “no deal” Brexit. The Communication sets out certain actions that the EU is or is proposing to take in the event of a “hard” Brexit. In relation to financial services, the Commission states that it will adopt temporary and conditional equivalence decisions to avoid disruption to derivatives clearing and depositaries services. The decisions would “complement” recognition of U.K. financial market infrastructures. The Commission has also urged these entities to apply in advance for recognition from the European Securities and Markets Authority.

The Commission reiterates that uncleared OTC derivatives contracts should remain valid and executable until maturity although, where one counterparty is based in the U.K., certain life-cycle events may trigger the need for an authorization or exemption.

In the Communication, the European Commission further notes that the risks presented to financial services by a “no deal” Brexit have decreased significantly over time because of the action taken by firms to establish new entities or relocate entities and to transfer contracts. In particular, the Commission observes that insurance firms have taken steps to ensure that they can continue to provide services to their clients,

including transferring contracts, setting up branches or subsidiaries and merging with firms established in the EU27.

The Commission also encourages the European Supervisory Authorities to begin preparing cooperation arrangements with the U.K. financial regulators to provide for the exchange of information and supervisory cooperation.

The Communication is available at:

https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/communication-preparing-withdrawal-brexit-preparedness-13-11-2018.pdf.

UK Government Refused Challenge of Ability of Court of Justice of the European Union to Rule on Whether Brexit Notification Can Be Revoked

On November 20, 2018, the U.K. Supreme Court announced that it has refused the permission to appeal application of the Secretary of State for Exiting the European Union. The application had been made to stop the reference by the Inner House of the Court of Session in Scotland to the European Court of Justice for a preliminary ruling on whether the U.K. can unilaterally revoke its notice of withdrawal from the EU. The court's referral to the CJEU was discussed in our previous post. The Court of Session opined on September 21, 2018 that a reference should be made to the CJEU - *Wightman v Secretary of State for Exiting the European Union* [2018] CSIH 62.

The U.K. Department for Exiting the EU has also published a statement on the reference to the CJEU confirming that it has submitted written observations to the CJEU. The Government's position is that the reference to the CJEU is inadmissible on the basis that the CJEU does not answer hypothetical questions or provide advisory opinions.

An oral hearing before the CJEU is scheduled for November 27, 2018.

The Supreme Court's announcement is available at: <https://www.supremecourt.uk/news/permission-to-appeal-application-for-secretary-of-state-for-exiting-the-european-union-v-wightman-and-others.html>, the DxEU statement is available at: <https://www.gov.uk/government/publications/wightman-and-others-v-secretary-of-state-for-exiting-the-european-union/wightman-and-others-v-secretary-of-state-for-exiting-the-european-union> and details of the Court of Session Opinion are available at: <https://finreg.shearman.com/scottish-court-says-court-of-justice-of-the-europ>.

Draft UK Legislation Published to Onshore the EU Interchange Fee Regulation for Brexit

On November 16, 2018, HM Treasury published a draft version of the Interchange Fee (Amendment) (EU Exit) Regulations 2018, along with explanatory information. The draft Regulations will primarily affect payment system operators, payment service providers (including banks and building societies) and the businesses and individuals who rely on card payment systems. The Payment Systems Regulator will consult separately on consequential changes to its guidance on the IFR once the draft Regulations are made. The PSR will also be responsible for correcting deficiencies in the Binding Technical Standards made under the IFR.

The draft Regulations amend the EU Interchange Fee Regulation that will be retained on Brexit and the Payment Card Interchange Fee Regulations 2015. The changes are designed to ensure that current laws on interchange fees continues to operate effectively in the U.K. once the U.K. has left the EU.

Among other things, the amendments include changes:

- I. reducing the scope of the retained IFR from the whole of EEA to the U.K. only, meaning that transactions taking place within the U.K. (where both the acquirer and the card issuer are located in the U.K.) would continue to be covered by the IFR (and consequently be

subject to caps on interchange fees), but cross-border card payments between the U.K. and the EU or EEA will no longer be within scope of the onshored U.K. IFR or the EU IFR;

- II. empowering HM Treasury to make regulations to set lower caps on U.K. debit and credit card transactions respectively, as well as to set a maximum cap for U.K. debit card transactions; and
- III. transferring, from the European Commission to the PSR, the function for making RTS regarding the requirements for separation of card schemes and processing entities.

In the explanatory information accompanying the draft Regulations, HM Treasury notes that reducing the scope of the IFR (to the U.K. only) could lead to higher costs for merchants participating in U.K.-EEA cross-border transactions, since these transactions will no longer be subject to the interchange fee caps. Higher interchange fees could be passed on to consumers, either directly or indirectly.

HM Treasury intends to lay the draft Regulations before Parliament before exit day and the Regulations will enter into force on exit day.

The draft Regulations are available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756931/Interchange_fee_SI_draft_text.pdf and the explanatory information is available at: <https://www.gov.uk/government/publications/draft-interchange-fee-amendment-eu-exit-regulations-2018/interchange-fee-amendment-eu-exit-regulations-2018-explanatory-information>.

UK Legislation Published to Onshore Anti-Money Laundering and Counter-Terrorism Financing Legislation for Brexit

On November 13, 2018, HM Treasury published a draft of the Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2018, along with explanatory information. The draft Regulations will primarily be relevant for payment service providers, anti-money laundering/counter-terrorism financing supervisory authorities and firms that are regulated through the U.K.'s AML/CTF regime. The draft Regulations introduce no material policy changes. Their purpose is to correct deficiencies in U.K. law and retained EU law to ensure that the U.K. AML/CTF regime continues to function effectively after the U.K.'s withdrawal from the EU.

The draft Regulations amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the MLRs), which transposed into U.K. law the provisions of the EU Fourth Money Laundering Directive (4MLD). The draft Regulations also amend the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 and the revised EU Funds Transfer Regulation (Regulation (EU) 2015/847). This EU Regulation gives legal effect to Financial Action Task Force Recommendation 16 on the information accompanying electronic transfers of funds. Additionally, the draft Regulations revoke Commission Delegated Regulation (EU) 2018/1108, which sets out RTS for central contact points under 4MLD.

The amendments include:

- I. removal of obligations on U.K. Persons to have regard to guidelines issued by the European Supervisory Authorities;
- II. removal of 4MLD-derived requirements in the MLRs to communicate certain information to EU institutions and other EEA member states;
- III. adjustments to require U.K. credit and financial institutions engaged in correspondent banking relationships to apply enhanced due diligence whether the relationship exists with an EEA institution or a non-EEA third-country institution;
- IV. empowering the Financial Conduct Authority to make technical standards imposing additional measures in cases where credit or financial institutions have branches or subsidiaries outside the U.K. in jurisdictions that do not permit implementation of group-wide policies and procedures at least as strong as those required by the MLRs.

HM Treasury intends to lay the draft Regulations before Parliament before exit day and the Regulations will enter into force on exit day.

The draft Regulations are available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/755678/Money_Laundering_Transfer_of_Info_EU_Exit_Regulations.pdf and the explanatory information is available at: <https://www.gov.uk/government/publications/draft-money-laundering-and-transfer-of-funds-information-amendment-eu-exit-regulations-2018/money-laundering-and-transfer-of-funds-information-amendment-eu-exit-regulations-2018-explanatory-information#policy-background-and-purpose-of-the-si>.

Competition

UK Competition Authority Opens Investigation Into Possible Anti-Competitive Practices

On November 16, 2018, the U.K. Competition and Markets Authority announced that it opened an investigation into suspected anti-competitive practices in the financial services sector on November 13, 2018. The investigation is at a very early phase, and the CMA does not consider that at this stage a statement of objections can be issued to any of the parties under investigation. Between now and August 2019 the CMA will be gathering information on the suspected infringement of the Competition Act 1998.

The announcement is available at: https://www.gov.uk/cma-cases/financial-services-sector-suspected-anti-competitive-practices?utm_source=c3c35c30-fdd4-4904-8cd6-cac93c416924&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate.

Corporate Governance

UK Conduct Regulator Wants Improvements to Banks' Whistleblowing Arrangements

On November 14, 2018, the FCA published the outcome of its review of firms' whistleblowing arrangements. The FCA has reviewed how retail and wholesale banks have implemented its whistleblowing rules by looking at firms' policies and procedures, the role of the whistleblowers' champion, firms' whistleblowing annual reports and the relevant training arrangements.

Both the FCA and the PRA published their whistleblowing rules in 2015 and the FCA extended certain of the requirements to U.K. branches of overseas banks in early 2017.

The FCA has published its findings, including areas of good practices, areas for improvement and the FCA's expectations of firms' whistleblowing arrangements. The FCA urges firms to consider its findings and whether they need to take action to improve their whistleblowing arrangements.

The FCA's review webpage is available at: <https://www.fca.org.uk/publications/multi-firm-reviews/retail-and-wholesale-banking-review-firms-whistleblowing-arrangements>.

Cyber Security

Financial Stability Board Publishes Cyber Lexicon

On November 12, 2018, the FSB published the final Cyber Lexicon of terms related to cyber security and cyber resilience. The Lexicon is intended to assist the FSB, other international standard setting bodies (such as the Basel Committee, the CPMI and the International Organization of Securities Commissions), authorities and the private sector to address threats to cyber security and adopt cyber resilience measures. The FSB has

also published an overview of responses to the public consultation, summarizing the main issues that emerged during the FSB's consultation on a draft lexicon and the changes adopted to address them.

The Lexicon is intended to facilitate: (i) a cross-sector understanding of relevant terminology; (ii) the assessment and monitoring of financial stability risks of cyber risk scenarios; (iii) information sharing; and (iv) the work of the international standard setting bodies to provide guidance to the industry, including best practices. The Cyber Lexicon is not intended for use in the legal interpretation of any international arrangement or agreement or any private contract and its use is not mandatory.

The Cyber Lexicon is available at: <http://www.fsb.org/wp-content/uploads/P121118-1.pdf>

The FSB's overview of the responses to the consultation is available at: <http://www.fsb.org/wp-content/uploads/P121118-2.pdf> and details of the FSB's proposed Cyber Lexicon are available at: <https://finreg.shearman.com/financial-stability-board-issues-consultation-on->.

Enforcement

US Securities and Exchange Commission Charges Digital Asset Trading Platform Founder for Operating Unregistered Exchange

On November 8, 2018, the Securities and Exchange Commission has accused the founder of a digital asset trading platform of failing to register as a national securities exchange. Without admitting or denying the charges, the founder agreed to pay \$300,000 in disgorgement and a \$75,000 penalty, and to cease and desist from future violations of Section 5 of the Securities Exchange Act of 1934.

The SEC said that the trading platform facilitated secondary market trading of ERC20 tokens, which are a type of digital asset issued and distributed on the Ethereum blockchain. The platform provided a marketplace that matched buyers and sellers of digital assets through the use of its order book, using smart contracts to validate, confirm and execute orders.

The SEC alleges that over an 18-month period, the digital asset trading platform handled more than 3.6 million buy and sell orders for ERC20 tokens that were securities. Further, approximately 92% of this trading took place after the SEC issued the DAO Report, in which the SEC warned that a platform trading digital asset securities and operating as an exchange must register with the SEC as a national securities exchange or be exempt from registration.

The SEC found that the trading platform met the criteria of an "exchange" and traded in digital asset securities without registration or an exemption, thereby resulting in violations of the Exchange Act by the trading platform and its founder.

The SEC is expected to issue guidance as to how and when a digital asset is a security.

The SEC Order is available at: <https://www.sec.gov/litigation/admin/2018/34-84553.pdf>

Financial Market Infrastructure

European Money Markets Institute Launches Second Consultation on Hybrid Methodology for Euribor

On November 12, 2018, the European Money Markets Institute published a second consultation paper (dated October 17, 2018) on its proposals to introduce a hybrid determination methodology for the Euro Interbank Offered Rate (Euribor). EMMI is the administrator for Euribor, a major euro interest reference rate for

unsecured interbank short-term lending and borrowing. Euribor was classed as a critical benchmark of systemic importance for financial stability by the European Commission in 2016.

The consultation paper sets out a summary of EMMI's findings during the testing phase for the newly proposed hybrid methodology, which took place between May and July 2018, and provides details on EMMI's proposals for the different methodological parameters that were yet to be specified when EMMI's first consultation was issued in March 2018. The consultation paper seeks feedback from market participants on a number of questions on aspects of the proposed methodology.

Comments on the consultation are requested by November 30, 2018. EMMI expects to publish a summary of the feedback received and a thorough view of the final methodological blueprint, including a concrete timeline and next steps, in early 2019. EMMI expects to submit an application (under the EU Benchmarks Regulation) for authorization as a benchmark administrator to the Belgian Financial Services and Markets Authority by Q2 2019. Panel banks will then be transitioned from the current Euribor methodology to the hybrid methodology. This process is expected to be completed before the end of 2019.

The consultation paper is available at: [https://www.emmi-benchmarks.eu/assets/files/DO373B-2018 Second Consultation Hybrid Euribor_full.pdf](https://www.emmi-benchmarks.eu/assets/files/DO373B-2018%20Second%20Consultation%20Hybrid%20Euribor_full.pdf) and details of EMMI's first consultation on the hybrid methodology are available at: <https://finreg.shearman.com/european-money-markets-institute-consults-on-hybr>.

Bank of England Writes to UK Firms on Upcoming Obligations for Internalized Settlement Reporting

On November 15, 2018, the Bank of England published a letter sent by its Financial Market Infrastructure Directive to compliance officers of U.K. firms that may be affected by forthcoming obligations under the EU Central Securities Depositories Regulation to report internalized settlements from July 2019.

The BoE considers that the firms likely to be subject to the CSDR's obligations are those with the regulatory permissions for safeguarding and administration of assets or arranging the same. Within this subset of regulated firms, an institution will be considered a settlement internalizer if it settles transfer orders on behalf of clients on its own account rather than through a Central Securities Depository. Settlement internalizers must submit reports to the BoE.

The letter provides details of the information that must be reported and where that information should be sent. The first internalized settlement reports to the BoE are due by July 12, 2019, covering the period from April 2019 until the end of June 2019.

The BoE requests that all firms that have received the letter complete a Settlement Internalization Survey by December 31, 2018. This request applies equally to firms that consider that they will not fall within the reporting obligation.

The letter is available at: <https://www.bankofengland.co.uk/-/media/boe/files/letter/2018/internalised-settlement-reporting-under-csdr.pdf> and the survey is available at: <https://app.keysurvey.co.uk/f/1273106/2011/>.

Financial Stability Board Progress Report on Reforming Major Interest Rate Benchmarks

On November 14, 2018, the FSB published a progress report on ongoing reforms to major interest rate benchmarks. The FSB has been coordinating international reform work, through its Official Sector Steering Group, since 2014, when it made several recommendations aimed at addressing cases of attempted manipulation in relation to key IBORs and the decline in liquidity in certain interbank unsecured funding markets. The OSSG launched a third major initiative in 2016, to improve contract robustness to address risks

of discontinuation of widely-used interest rate benchmarks. That initiative is being led by the International Swaps and Derivatives Association, which launched a consultation on fallback rates in July 2018.

The progress report provides an update since the FSB's progress report in October 2017 and covers:

- I. Developments in Interbank Offered Rates, including discussion of the future of LIBOR.
- II. Identification of and transition to risk-free rates, where appropriate, for transactions denominated in USD, EUR, JPY, GBP, CHF, AUD, BRL, CAD, HKD, MXN, SGD and ZAR.
- III. The development of fallback rates to enhance contractual robustness.

The FSB proposes to publish a further progress report in late 2019.

The progress report is available at: <http://www.fsb.org/wp-content/uploads/P141118-1.pdf>, details of the October 2017 progress report are available at: <https://finreg.shearman.com/financial-stability-board-seeks-more-action-on-re>, details of ISDA's July 2018 consultation on fallback rates are available at: <https://finreg.shearman.com/financial-stability-board-welcomes-isda-consultat> and FSB statement welcoming ISDA's July 2018 consultation is available at: <https://finreg.shearman.com/financial-stability-board-welcomes-isda-consultat>.

FinTech

Three Central Banks Explore Advantages of Wholesale Central Bank Digital Currencies

On November 15, 2018, the BoE, the Bank of Canada and the Monetary Authority of Singapore published a joint report entitled, "Cross-Border Interbank Payments and Settlements." Referring to current industry projects to address existing problems in cross-border payments affecting end-users, commercial banks and central banks, the report analyzes these issues and discusses proposed new models for processing cross-border transactions. The report sets out three models for cross-border payments and settlements and discusses the key considerations and dependencies of each model. Each model is then assessed against the existing identified challenges in cross-border payments.

Model 1 is based on existing plans to enhance the current systems within and across jurisdictions, which is considered to be the baseline for discussions. Model 2 is based on an expanded role for domestic real-time gross settlement infrastructure, which would be "super-correspondents" in settling cross-border payments and would replace existing correspondent banks. Model 3 has three variations, all of which are based on cross-border payments between banks being settled with wholesale central bank digital currencies (W-CBDCs). The three variations are: (i) W-CBDCs that can be held and exchanged only in their home jurisdiction; (ii) W-CBDCs held and exchanged within and beyond their home jurisdictions; and (iii) a single universal W-CBDC backed by a basket of currencies issued by participating central banks.

The report concludes that further analysis of the proposed models is needed and that studies are needed on various topics, including the legal and regulatory requirements and risks involved in each model, the cross-jurisdictional governance framework needed to ensure harmonized standards and implementation, the impact on monetary policy, changes to legislation to establish the recognition of W-CBDCs as legal tender for interbank payments and settlement and eligibility criteria for participants in each of the models.

The report is available at:

<http://www.mas.gov.sg/~media/ProjectUbin/Cross%20Border%20Interbank%20Payments%20and%20Settlements.pdf>.

Funds

EU Supervisory Authority Consults on Proposed Guidelines on Money Market Fund Reporting Requirements

On November 13, 2018, ESMA launched a consultation on proposed Guidelines for Money Market Fund Managers, to assist them in complying with their obligations, under the Money Market Funds Regulation, to report information to the relevant national regulator of each MMF they manage. The reporting obligation applies on at least a quarterly basis (or annually for MMFs with total assets under management not exceeding Euro 100 million). The European Commission adopted Implementing Technical Standards in April 2018, which specify the content of a reporting template that will be developed for the information. The ITS have applied since July 21, 2018 and MMF managers must begin submitting reports under the MMF Regulation in the first quarter of 2020.

ESMA's consultation seeks views on draft Guidelines, including IT-related guidance, so that MMFs have all the necessary information to fill in the reporting template. The draft Guidelines set out general principles that apply to the entire MMF reporting and further guidance on reporting and reporting periods as well as the procedure for the first report for newly-authorized MMFs. The draft Guidelines then set out information and guidance on how to complete specific fields within the template.

ESMA invites comments on the draft Guidelines by February 14, 2019. It will then finalize the Guidelines. An application date for the Guidelines has not yet been set, but national regulators and financial market participants should make every effort to comply with them once in force.

The consultation paper is available at: https://www.esma.europa.eu/sites/default/files/library/esma34-49-144novbos_cpon_mmfguidelinesreporting.pdf and details of the ITS are available at: <https://finreg.shearman.com/implementing-technical-standards-published-for-re>.

International Body Proposes Framework for Assessing Fund Leverage

On November 14, 2018, IOSCO launched a consultation on a proposed framework to help assess leverage used by investment funds. The consultation follows a recommendation to IOSCO from the FSB in its January 2017 report, "Policy Recommendations to Address Structural Vulnerabilities from Asset Management Activities." The FSB recommended, among other things, that IOSCO should identify and/or develop consistent measures of leverage in funds to facilitate more meaningful monitoring of leverage for financial stability purposes and help enable direct comparisons across funds and at a global level.

The consultation sets out a proposed framework comprising a two-step process aimed at achieving a meaningful and consistent assessment of global leverage for funds, as part of an effort to address risks that may arise from certain asset management activities. The first step would use the measures of leverage identified and/or developed, with a view to identifying and analyzing funds that may pose a risk to financial stability. The second step would involve further analysis of this sub-set of funds.

Comments on the consultation are invited by February 1, 2019.

The consultation paper is available at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD615.pdf> and the FSB's January 2017 report is available at: http://www.fsb.org/wp-content/uploads/FSB-Policy-Recommendations-on-Asset-Management-Structural-Vulnerabilities.pdf?_sm_au_=iVVt74ZnWtnvWkQr.

MiFID II

EU Supervisory Authority Issues Updated Supervisory Briefing on MiFID II Suitability

On November 13, 2018, ESMA published an updated version of its supervisory briefing on suitability. The original suitability briefing was published in December 2012 to provide guidance to EU national regulators on the suitability requirements under the original Markets in Financial Instruments Directive. The updated suitability briefing reflects the amended requirements introduced by the revised MiFID and takes into account the new version of ESMA's Suitability Guidelines that was published in May 2018.

While the updated briefing is primarily aimed at national regulators, it should also assist market participants by providing indications of compliant implementation of the MiFID II suitability provisions.

While ESMA's current Suitability Guidelines are subject to a "comply or explain" mechanism (the notification period for which expires on January 6, 2019), no such similar requirement applies to this updated briefing. The updated suitability briefing will take effect and replace the 2012 version from March 7, 2019, when ESMA's new Suitability Guidelines also take effect.

The updated MiFID II Suitability Briefing is available at:

[https://www.esma.europa.eu/sites/default/files/library/esma35-43-](https://www.esma.europa.eu/sites/default/files/library/esma35-43-1206_mifid_ii_supervisory_briefing_on_suitability.pdf)

[1206_mifid_ii_supervisory_briefing_on_suitability.pdf](https://www.esma.europa.eu/sites/default/files/library/esma35-43-1206_mifid_ii_supervisory_briefing_on_suitability.pdf) and details of ESMA's revised Suitability Guidelines are available at: <https://finreg.shearman.com/european-securities-and-markets-authority-iss>.

Recovery & Resolution

Eurozone's Single Resolution Board Publishes 2019 Work Programme

On November 12, 2018, the EU Single Resolution Board published its 2019 Work Programme, setting out its priorities and principal tasks for the next year. The SRB is the resolution authority for all banking groups and entities as well as cross-border groups that are subject to direct prudential supervision by the ECB (i.e., for banks within the Eurozone Banking Union).

The SRB's work in 2019 will include, among other things, the following:

- increasing the scope of banks with developed resolution plans and enhancing existing resolution plans to reflect the development of new or updated SRB policies;
- the adoption of more than 100 group-level decisions on minimum requirement for own funds and eligible liabilities (MREL) and the determination of over 530 MREL targets for individual entities;
- enhancing the analysis of potential impediments to resolvability of banks;
- the development of better ICT solutions for crisis management, including establishing a dedicated team to assist individual Crisis Management Teams in implementing the improvements; and
- the adoption of several new and updated SRB policies covering, for example, MREL decisions, resolvability assessments and operational continuity.

The SRB expects a significant increase of the number of resolution plans for less significant institutions, the development of which falls within the remit of the Eurozone national regulators.

The SRB's 2019 Work Programme is available at: https://srb.europa.eu/sites/srbsite/files/wp2019_final.pdf.

Financial Stability Board Publishes Upcoming Resolution Priorities for Banks, Insurers and CCPs

On November 15, 2018, the FSB published its 2018 resolution report, entitled “Keeping the pressure up,” setting out: (i) the progress in implementing the FSB’s resolution policies for CCPs and in the banking and insurance sectors; (ii) the next steps in monitoring and evaluating the effects of resolution reforms; and (iii) the actions and timelines for 2019 and beyond. The FSB highlights that, although substantial progress has been made, firms need to continue work to improve their resolvability, and authorities and lawmakers need to complete the reforms and implement them fully.

The FSB report describes the priority areas for G-SIBs, including the implementation of technical and operational capabilities to ensure that a resolution plan can be timely and effectively executed, if needed. Another key area is implementation of the total loss absorbing capacity (TLAC) requirements, in particular, internal TLAC. In June 2018, the FSB launched a call for feedback on the technical implementation of TLAC for G-SIBS to assess whether implementation aligns with the timelines and objectives set out in the TLAC Standard. The FSB will report on the outcomes of that review during 2019. Work will also be required to ensure (i) cross-border recognition of temporary stays on early termination rights in financial contracts; and (ii) continuity of access to financial market infrastructures and FMI intermediaries.

On CCP resolution, the FSB noted that most jurisdictions do not yet have a comprehensive regime and that resolution planning work is needed, in particular for those CCPs that have been identified as systemically important in more than one jurisdiction. To support this work, the FSB has published a discussion paper on financial resources and on the treatment of CCP equity in resolution and intends to develop guidance by 2020.

The FSB report states that most jurisdictions do not have complete insurer resolution regimes in place. The FSB is monitoring resolvability in the insurance sector to assess the progress made in this area.

The report is available at: <http://www.fsb.org/wp-content/uploads/P151118-1.pdf>.

Financial Stability Board Discusses Financial Resources for CCP Resolution

On November 15, 2018, the FSB published a discussion paper on financial resources to support CCP resolution and the treatment of CCP equity in resolution. The FSB considers that further evidenced-based guidance is needed on this topic and the discussion paper is the first step in developing such guidance by the end of 2020. The FSB intends to use the practical experience of resolution planning that resolution authorities and Crisis Management Groups have gained to develop the guidance. The discussion paper outlines: (i) relevant considerations for evaluating whether a CCP’s existing financial resources and tools are satisfactory for implementing the individual CCPs’ resolution strategy, including a proposed five-step process and CCP-specific factors that warrant assessment; and (ii) factors that could steer authorities in their approaches to the treatment of CCP equity in resolution, including consideration of whether different ownership structures are relevant.

Responses to the discussion paper should be submitted by February 1, 2019. The FSB notes that responses to the discussion paper will be used to develop proposed guidance which will be consulted on at the appropriate time.

The discussion paper is available at: <http://www.fsb.org/wp-content/uploads/P151118-2.pdf>.

Securities

EU Final Draft Technical Standards and Technical Advice Published Governing Securitization Repositories and Data Access

On November 12, 2018, ESMA published a series of documents delivering on some of its outstanding mandates to provide draft technical standards and technical advice to supplement the Securitization Regulation. The Securitization Regulation will apply directly across the EU from January 1, 2019. ESMA has been mandated to provide draft regulatory and implementing technical standards and technical advice to supplement a number of the Regulation's provisions. ESMA has also published a statement on its near-term implementation of the Securitization Regulation, to assist market participants in understanding ESMA's role and its progress on its deliverables.

ESMA has published the following documents:

- I. A Final Report setting out final draft Technical Standards on the application requirements for securitization repositories, applicable operational standards and access conditions. The final report sets out feedback on its previous consultations on the operational standards for collecting and verifying securitization data and on data access conditions and on the application requirements. ESMA has confirmed that respondents to its consultation on draft technical standards were broadly supportive of its proposals but that it has made certain specific amendments. There were some mixed views on the general conceptual framework of the application requirements, with some respondents arguing that the requirements could be less detailed and extensive. The final report contains: (i) final draft RTS on securitization repository operational standards for data collection, aggregation, comparison, access and verification of completeness and consistency; (ii) final draft RTS on the information to be provided in an application for registration of a securitization repository; and (iii) final draft Implementing Technical Standards on the format of the information to be provided in a registration application.
- II. A Final Report setting out ESMA's finalized technical advice to the European Commission on proposed fees for securitization repositories. ESMA consulted on draft technical advice between March and May 2018. ESMA states that the majority of respondents supported nearly all of its proposals, subject to certain specific responses, to which ESMA provides feedback and indicates where it has changed its final advice. ESMA also notes that market participants are concerned about uncertainty around ESMA's future supervisory costs and the impact of this on the supervisory fees payable by registered securitization repositories.
- III. Reporting instructions for providing "Simple, Transparent and Standardized" status notifications and an interim STS notification template. These documents are intended as interim guidance for market participants wishing to notify ESMA that a securitization meets the criteria for STS status, while ESMA continues to develop its STS register.

ESMA's accompanying statement on its near-term implementation of the Securitization Regulation provides further details on topics related to securitization repositories and disclosure and on ESMA's interim notification arrangements.

ESMA's Final Report on securitization repository application requirements, operational standards and access conditions is available at: https://www.esma.europa.eu/sites/default/files/library/esma33-128-488_final_report_repositories_technical_standards.pdf, ESMA's Final Report on its technical advice on fees for securitization repositories is available at: https://www.esma.europa.eu/sites/default/files/library/esma33-128-505_final_technical_advice_secureditisation_repositories_fees.pdf, the reporting instructions are available at: https://www.esma.europa.eu/sites/default/files/library/esma33-128-585_sts_reporting_instructions.pdf, the interim STS notification template is available at: <https://www.esma.europa.eu/files/esma33-128-585atemplateinterimsolutionxlsx> and ESMA's Statement on near-term implementation of the Securitization Regulation is available at: https://www.esma.europa.eu/sites/default/files/library/esma33-128-577_esma_statement_secureditisation.pdf.

Upcoming Events

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

December 18, 2018: ESAs public hearing on draft joint guidelines on the cooperation and information exchange between national regulators supervising banks and other financial institutions for AML/CFT compliance

Upcoming Consultation Deadlines

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

November 30, 2018: EMMI second consultation on hybrid methodology for Euribor

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

December 6, 2018: ESA consultation on proposed amendments to the PRIIPs KID RTS

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

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

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 2, 2019: BoE/PRA joint consultation on approach to amending financial services legislation under the European Union (Withdrawal) Act 2018

January 2, 2019: PRA consultation on changes to PRA Rulebook and onshored Binding Technical Standards for Brexit

January 2, 2019: BoE consultation on changes to FMI rules and onshored Binding Technical Standards for Brexit

January 2, 2019: BoE consultation on approach to resolution statements of policy and onshored Binding Technical Standards for Brexit

January 11, 2019: ESMA call for evidence on periodic auctions for equity instruments

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

February 1, 2019: IOSCO consultation on proposed framework for assessing leverage used by investment funds

February 1, 2019: FSB discussion paper on financial resources to support CCP resolution and the treatment of CCP equity in resolution

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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This memorandum 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.

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