

Transatlantic Financial Services Developments

IN THIS ISSUE

EU Developments

- Brexit Negotiations
- Equivalence
- Markets in Financial Instruments (MiFID II)
- Tax
- Sanctions

US Developments

- Financial Services Regulatory Reform
- Dodd-Frank Act Reform
- Trump Administration – Key Appointments and Developments
- Sanctions

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EUROPE

BREXIT NEGOTIATIONS

Timeline

The European Commission (Commission) began the first phase of negotiations with the UK on June 19, continued on July 17. Negotiators are expected to cover EU and UK **citizens' rights**, the terms of a **financial settlement**, and the question of the **border with Ireland**. The relevant Commission position papers have been published [here](#).



The second phase of negotiations should be completed before March 29, 2019. The European Parliament (EP) has expressed support for a [three-year transition period](#), an idea also widely supported by UK businesses. According to the EP, this would provide legal certainty to businesses and citizens, as the UK would temporarily remain under ECJ jurisdiction.

UK Free Trade Agreements

A recent EU Court of Justice ruling on the potential trade deal between the EU and Singapore may affect a future EU-UK trade agreement. The Court ruled that the agreement with Singapore cannot be concluded by the EU alone, which may well slow down the conclusion of future EU-UK trade agreements. It may also prove an additional complicating factor for any future EU-US trade deals.

Relocation of the UK's Financial Services Industry

Both the European Central Bank (ECB) and the European Securities and Markets Authority (ESMA) issued [statements](#) and [opinions](#) on the “**relocation**” requirements for banks that are established in the UK and seek to relocate to the euro area post-Brexit. According to the [ECB](#), shell companies with inadequate local risk management and operational independence will not be accepted, while large intragroup exposures supporting back-to-back schemes will be intensely scrutinized. ESMA's initial opinion on Brexit relocations describes nine principles for a **common supervisory approach**. More recently, ESMA issued more detailed opinions on relocation arrangements by [investment firms](#), [investment management companies](#), and [trading venues](#).

The UK government's [European Union \(Withdrawal\) Bill](#), published on July 13, will domesticate large parts of EU law into the UK statute books.

Finally, the UK government is planning to introduce new powers under a **post-Brexit financial sanctions regime** against third countries, such as Iran, Russia, and Syria, in order to continue meeting its UN commitments. The “Public Consultation on the UK's Future Legal Framework for Imposing and Implementing Sanctions” can be found [here](#).

EQUIVALENCE

Within the context of the Commission's plans to reform its supervisory authorities, ESMA is [seeking to expand its role](#), setting out demands



for more regular equivalence assessments and for monitoring of regulatory and supervisory developments. ESMA argues for a common approach to third-country entities at the EU level, with ESMA having supervisory and enforcement powers for non-EU credit rating agencies, trade repositories, central counterparties and benchmarks, and potentially trading venues that are active in the EU.

In related context, on June 13, the Commission published its [proposal for a regulation](#) amending the European Market Infrastructure Regulation (EMIR) with regard to CCP oversight rules. The proposed regulation ensures more robust **supervision of third-country CCPs** with systemic relevance to EU financial markets.

MARKETS IN FINANCIAL INSTRUMENTS (MIFID II)

In a clarifying [opinion](#) on the meaning of the term “**traded on a trading venue**” (TOTV) under **MiFID II**, ESMA set out that all OTC derivatives transactions concluded outside of trading venues with the same reference data details as derivatives traded on a trading venue should be considered as TOTV. As a result, such transactions are subject to the same reporting and transparency requirements.

Investor protection safeguards under **MiFID II** have been supplemented by ESMA's [final report](#) on **product governance guidelines**. The guidelines set out product governance obligations for “target market assessments” by manufacturers and distributors of investment products. In light of feedback to previous consultations ESMA also altered parts of the guidelines relating to portfolio diversification. In addition, updated ESMA [MiFID II / MiFIR Q&As](#) on investor protection topics are now available.

Payment Services Directive (PSD2)

The Commission [recently asked](#) the European Banking Authority (EBA) to make several amendments to its technical standards on “**strong customer authentication** and common and secure open standards of communication.” The EBA rejected these proposed amendments in a recent [opinion](#), and made alternative proposals on the issues.

Securitization

After months of stalemate, the Council and the European Parliament reached an **agreement** on a regulatory framework for [simple, transparent and standardised \(STS\) securitization](#). The parties agreed to set the so-called ‘risk retention requirement’ for securitization at five percent.

TAX

The Council of the EU recently held political discussions about the progress on the proposal for a Directive on a **Common (Consolidated) Corporate Tax Base** during which member states asked for more flexibility regarding a first stage political agreement on the rules for calculating a common corporate tax base.

In a bid to “crack down” on tax intermediaries, such as tax advisors, accountants, attorneys, and others, the Commission published a [proposal](#) to **enhance transparency requirements** for intermediaries whose tax planning activities involve using “**complex cross-border schemes**.” The Q&A on the new tax transparency rules can be accessed [here](#).

EU SANCTIONS AGAINST RUSSIA

The EU [extended sanctions](#) against Russia until January 31, 2018, limiting access to EU capital markets, imposing bans on arms and dual-use goods and curtailing access to sensitive technologies. The EU also decided to [prolong its restrictive measures](#) in response to the illegal annexation of Crimea and Sevastopol, until June 23, 2018.

Meanwhile, the EU is unlikely to endorse the additional sanctions against Russia, which have recently been adopted by the US government, and which are being opposed by certain EU member states that rely on Russian gas imports such as Germany, whilst being welcomed by other EU member states.

UNITED STATES

FINANCIAL SERVICES REGULATORY REFORM

Pursuant to Trump Administration Executive Order 13772, the Department of Treasury released its [report on the banking industry](#), reviewing “the extent to which the existing financial regulatory system promote[s] the Administration’s ‘[Core Principles](#)’ of financial regulation.” The Department of Treasury will issue three additional reports covering capital markets; asset management and insurance industries; and non-bank financial institutions, including financial technology companies.

DODD-FRANK ACT REVIEW

The US House of Representatives passed the Financial CHOICE Act, a Republican-sponsored bill to roll back provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The CHOICE Act would overhaul the Consumer Financial Protection Bureau (CFPB); repeal provisions that would allow for the wind-down of large, financial institutions; and repeal the Financial Stability Oversight Council’s (FSOC) authority to designate non-bank financial companies as systematically important financial institutions (SIFIs). The US Senate is not likely to take up the Financial CHOICE Act and will, instead, craft its own proposal. Ultimately, the two chambers will need to reach a compromise.

Mandatory Arbitration

The CFPB [announced](#) it would ban mandatory arbitration clauses, which would bar a number of major financial institutions from implementing policies that prevent consumers from banding together and bringing forth class action law suits.

Banking Regulation

The Federal Reserve released its annual [Comprehensive Capital Analysis and Review \(CCAR\)](#), its qualitative and quantitative assessment of the capital planning practices of the nation’s largest banks. The Federal Reserve did not object to any of the banks’ capital plans.

Capital Formation

The SEC’s Division of Corporation Finance [announced](#) it would expand



the 2012 Jumpstart Our Business Startups (JOBS) Act from only including “emerging growth companies” (EGCs) to including all companies. The JOBS Act, signed into law by former President Barack Obama, was intended to ease securities regulations on EGCs and small businesses, making it easier for companies to go public as well as privately raise capital. The expansion allows all potential issuers to submit draft registration statements related to initial public offerings (IPOs), Exchange Act registrations, and most other offerings made in the first year after going public.

Swaps and Futures

The CFTC launched [LabCFTC](#), a FinTech initiative, “designed to make the CFTC more accessible to FinTech innovators and serve as a platform to inform the Commission’s understanding of new technologies.” Acting Chair J. Christopher Giancarlo stated the LabCFTC will assist FinTech innovators in complying with the CFTC regulatory structure.

The CFTC also unveiled its [Keep it Simple Stupid \(KISS\) initiative](#) to simplify and modernize the Commission’s rules. The CFTC is seeking public comment until September 30, 2017.

The Market Risk Advisory Committee (MRAC) recently [held two meetings](#) discussing the impact of Brexit on the financial markets. At a June 20 meeting, Acting Chair Giancarlo stated that “[Brexit] will not alter the US’s commitment with the EU to regulate derivatives clearing business.”

Fiduciary Duty Regulation

The US SEC chairman posted a [request for public comment](#) on the fiduciary rule and the cooperation between the SEC and the Department of Labor (DOL) on the issue. On June 9, the DOL’s fiduciary rule went into partial effect after a 60-day delay.

More recently, the DOL submitted a [Request for Information](#) on the fiduciary rule, which requires financial advisors to act in their clients' best interests. The DOL is accepting public comments until August 7, 2017.

Central Bank Policy

[Minutes](#) released from the Federal Reserve's Open Market Committee meeting on June 14 indicate Federal Reserve officials plan to raise interest rates once more this year and three times in 2018. In 2017, the Federal Reserve raised interest rates twice.

TRUMP ADMINISTRATION – KEY APPOINTMENTS AND DEVELOPMENTS

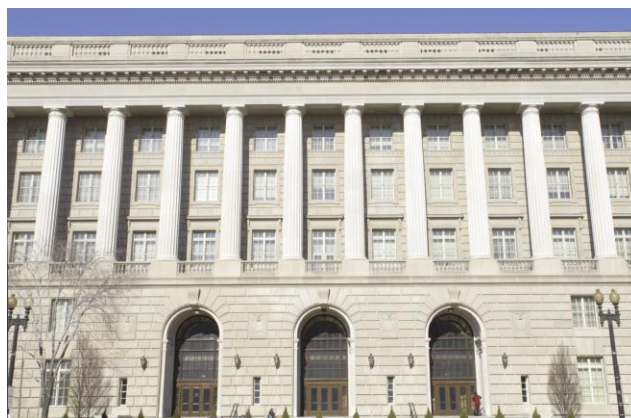
The Trump Administration continues to fill senior positions for the administration. [Steven T. Mnuchin](#) was sworn in as secretary of the Treasury.

President Trump named [Keith Noreika](#) to serve as Acting Comptroller of the Currency and [Joseph Otting](#) was nominated to serve as Comptroller of the Currency, which requires Senate confirmation. President Trump named [Randal Quarles](#) to serve as a member of the Federal Reserve Board of Governors, which requires Senate confirmation. On May 4, [Jay Clayton](#) was sworn in as the chairman of the SEC. On August 3, the Senate voted unanimously to confirm Acting Chairman [J. Christopher Giancarlo](#) as chairman of the CFTC. Additionally, the Senate voted unanimously to confirm Brian D. Quintenz and Rostin Benham as commissioners of the CFTC. The nomination of Dawn DeBerry Stump as a Republican CFTC commissioner is still pending Senate confirmation. Commissioner Sharon Bower, a Democrat, has announced her intent to resign and her successor could be named shortly. The Senate also confirmed [David J. Kautter](#) and [Christopher Campbell](#) to be assistant secretaries of Treasury for Tax Policy and Financial Institutions, respectively.

Funding for Federal Agencies

The House Appropriations Committee [approved](#) by a vote of 31-21 a \$20.24 billion [fiscal year 2018 financial services spending bill](#). The bill has been sent to the Senate for consideration.

During a Congressional appropriations [hearing](#), Acting Chair J. Christopher Giancarlo requested \$281.5 million for fiscal year 2018 (FY18), an increase from President Trump's FY18 request of \$250 million for the CFTC. On June 27, the House Appropriations Subcommittee on Agriculture [proposed](#) a \$248 million budget for the CFTC. The bill is pending before the full House Appropriations Committee.



SANCTIONS

Shortly after the US Senate and House of Representatives voted 98-2 and 419-3, respectively, to adopt tougher sanctions on Russia, President Donald Trump signed the bipartisan bill, [H.R. 3364](#) into law. The law imposes sanctions on people who are involved in human rights abuses and targets Russians who have engaged in cyberattacks or supplied weapons to Bashar al-Assad's Syrian government. The law also imposes tougher sanctions on Iran and North Korea.

For More Information Contact:

The foregoing summaries are not intended as legal advice on any particular question of law. If you have any questions or concerns about these or related developments, please contact one of the lawyers listed below.



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