Quote of the Week

"In this report, we examined the capital markets system to identify regulations that are standing in the way of economic growth and capital formation. By streamlining the regulatory system, we can make the U.S. capital markets a true source of growth”

- US Treasury Secretary, Steven Mnuchin

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Regulatory Watch List

**Clearing-up** US chief economic advisor cites central counterparties’ lack of transparency, as new systemic risk.
EC backs ECB central oversight of Euro-clearing, banks push to grandfather uncleared derivatives prior to Brexit.

**Trading-up** Basel III deal, after being blocked by new US administration in January, now looks likely to be completed in 2017.
US Banking

Treasury Report on Cutting Red Tape
On October 4, Treasury issued report on tax reforms, also-hosted summit to cut bureaucratic red tape.

- Treasury Secretary Mnuchin response to January 2017 order by President Trump on less cost.
- Executive Order 13772 instructed Treasury to report on regulation, and Order 13789 on tax.
- Treasury has identified over 200 regulations that can be repealed, from fourth quarter, 2017.
- Withdraw proposed S. 2704 rule, limiting valuation discount on transfers of business.
- Remove S. 103 requirements for political subdivisions to issue tax-exempt muni bond.
- Replace S. 385 documentation requirement, with a more streamlined documentation rule.
- Address base erosion and earnings stripping, and on foreign takeovers of US companies.
- Allow private contractors to assist IRS in auditing taxpayers, including interview stage.
- Revoked the regulations on disguised sales and reinstated the previous version of rule.
- Narrowed S. 337(d) on transfers of property applied to investment companies and REITs.
- Exceptions for S. 367 transfers to foreign corporations, without addressing US tax.
- Relief for taxpayers to postpone S. 987 on gains made from a qualified business unit.

Fed Faster Payment Governance
On October 13, Fed named 27 group members to set governance standards around faster payments.

- Team established by faster payments task force recommendation in July 2017 report
- Sean Rodriguez, Fed faster payment strategy leader, will be chair of the working group.
- Develop governance framework, initial focus on structure, decision-making, and processes.
- Seek comment on recommendation in spring 2018; conclude work, in second half of 2018.

OCC Noreika Discusses Online Innovation
On September 25, OCC head Noreika spoke on online loans, innovation at lending policy summit.

- Argued that growth of online marketplace lending is a natural evolution of banking
- Market originates $40B consumer, small entity loans, doubled annually from 2010.
- Some say market will reach nearly $300B by 2020, others see up to $1T by 2025.
- New business models will be tested, on how loans are originated, perform in stress.
- Noted that the OCC generally supports bank pilots, but cannot provide safe harbor from compliance requirements.
- Defended OCC authority over fintech charters, based on assessing need, details.

FDIC Hoenig Moral Hazard Risk
On October 11, FDIC Vice Chair Hoenig spoke on moral hazard in banking and need for capital.

- Implicit guarantees guarding against risk from loss can invite excessive risk-taking.
- Threat from failure will ensure that banks stay more sensitive to taking excess risks.
- Without discipline from depositors, other creditors are inclined to withdraw funds.
- As this occurs, particularly in large banks, the risks are often borne by public/bail outs.
- The risks are then borne by healthy banks that fund the deposit insurance system.
- Along with their customers, who pay costs by higher loan rates, lower deposit rates.
- Bank supervision and capital can counter-balance the dilemma from moral hazards.
- Requires commitment of bank owners in form of equity capital, strong supervision.
- Another tool for counterbalancing moral hazard is by pricing of deposit insurance.
US Consumer

**CFPB Final Rule on Payday Lending**
On October 5, CFPB finalized rule aimed at stopping payday debt traps involving large repayments.
- For payday loans requiring consumers to pay all or most of the debt at a single occasion.
- Many people taking out these loans end up paying expensive charges to refinance them.
- They are expensive, with annual percentage rates often exceeding 300 percent or higher.
- Repayment is due in full, by the borrower's next paycheck, usually in two or four weeks.
- These loans are heavily marketed to the most financially vulnerable consumers.
- Over four of five payday loans are re-borrowed in a month, on or straight after their due date.
- Rule requires full-payment test -- can the borrower repay amount without re-borrowing.
- Lenders to obtain borrower ability-to-pay information from credit reporting systems.
- If lender cannot access bank account re loan, they will need a new borrower authorization.

**CFPB Use of Technology in Closings**
On October 4, CFPB issued guide on technology role in online mortgage closing.
- Online closing participants reported higher measures of understanding mortgage process.
- More efficiency, and a higher perception of being "in control" of whole closing process.
- In many locations, online closings were not available due to State laws and requirements.
- Due to defensibility of eSignatures in court, no standardization, too many players needed.
- Almost 80% of American population are now living in counties that allow eRecording.
- GSEs have dedicated teams working with companies to build on eClosing capabilities.
- Seen increase in State and local collaboration, which will promote the adoption of eClosing.

**NCUA Advertising Accuracy**
On October 4, NCUA proposed addition of statement to advertising rules, so more similar to banks
- Regulatory relief for federally insured credit unions, by adding a new option for statement.
- Rule required unions to use NCUA official advertisement statement, when advertising.
- Three current versions, proposal to add fourth version which states it is "insured by NCUA."
- Eliminate requirement on the statements of condition, required to be published by law.
- Part 740 applies to CUs only, amended in 2011 to be more stringent than that of FDIC.
- Affected more CU ads, and disrupted balance of regulatory burden, between bank and CUs.

**CFPB Servicer Communication**
On October 4, CFPB issued rule for mortgage servicer communications to borrowers at foreclosure risk.
- Interim rules provided more flexibility to communicate with a borrower who is at risk.
- On when to communicate about foreclosure prevention options available to borrowers.
- Facilitated borrowers receiving timely information from their mortgage servicers.
- Even where submitted a request to cease communication, in Fair Debt Collection Act.
- Consumer may request that company stop contacting them except for limited purpose.
- Rule effective on October 19, 2017, same date which 2016 rule provisions become effective.
- Separate proposed rule will modify timing required for bankruptcy periodic statement
- Certainty on when to give periodic statements to consumers in cases of bankruptcy.

**FDIC Annual Deposits Survey**
On October 3, FDIC issued results from the annual survey of branch office deposits (SOD).
- Survey on branch office deposits, for FDIC-insured institutions, as of June 30, 2017.
- Deposit totals for more than 89,000 domestic offices, operated by more than 5,700 banks.
- Include commercial, savings banks, savings associations, and US branch of foreign banks.
- Use tool to locate bank offices in geographic areas, and create custom market share reports.
US Securities and Investment Management

Treasury Report on Capital Markets
On October 6, Treasury issued a report on capital markets regulation and fact sheet on priorities.

- Vast majority of changes can be enacted at discretion of regulatory agencies, and do not require passage of new legislation.
- Report content supported by CFTC Chair Giancarlo, as well as SEC Chair Clayton.

Recommendations
- Revisit portions of JOBS Act, raise Reg CF crowdfunding limit to $5M from $1M.
- Redefine accredited investors, to broaden investing public base, widen investor access.
- Liberalize pre-IPO communication, remove non-material disclosure requirements.
- Include more robust economic analysis, and public input in the rulemaking process.
- Review roles, responsibilities and capability of SROs, recommended improvements.
- Assess infrastructure role, e.g., FSOC study appropriate risk management for FMUs.
- Remove controversial conflict mineral rule, repeal Dodd-Frank Act Sections 1502, 1503, 1504.
- Repeal Section 953(b) on pay ratio disclosure of executive pay vs. median pay.
- Examine Basel III impact on US secondary market activities in securitized products.
- Advance US interests, and promote a level playing field in international regulations.
- Enhance harmonization between SEC and CFTC, change to margin and capital.
- FIA commended proposal to deduct initial margin of cleared derivatives for leverage.
- Calculate capital by adjusted SA-CCR method by offset for initial margin (not gross).

SEC Disclosure Simplification
On October 11, SEC proposed rules to simplify public company disclosures under Reg S-K, FAST Act.

- Permit registrants to forgo discussing oldest period if information was previously reported, is no longer material, will take a fresh look, with aim to discourage repetitive disclosures.
- Create process efficiency, to get confidential treatment for commercially sensitive issues.
- Omit exhibits from contract, without need to request confidential treatment from SEC.
- Require registrants to provide legal entity identifiers, (LEIs), that do not already have.
- Asks feedback on structured data format for LEIs so can be most useful to investors.
- Comment requested within 30 days from publication, pending issue in Federal Register.

CFTC-EU Margin Equivalence
On October 13, CFTC and EC agreed comparability on margin on uncleared swaps, and trade venues.

- CFTC Chair Giancarlo cited commitment to international collaboration and comity.
- Avoid need for firms to post double margins on derivatives, maintain integrity of markets.
- CFTC determination found EU swaps margin rules, comparable to those in US under CEA
- CFTC and EC also announced a common approach on derivative trading venues.
- EC will adopt equivalence decision that covers CFTC-authorized SEFs and DCMs.
- Provided requirements of MiFIR, MiFID, and MAR, are met by the US exchanges.
- CFTC to exempt from SEF registration, trade venues authorized under MiFID/MiFIR.
- For EU multilateral trading facilities (MTF), and organized trading facilities (OTF).
- Where venues identified to CFTC by EC, provided they satisfy standards under CEA.

FINRA Professional Designation Alert
On October 11, FINRA warned investors about the misleading use of professional designations.

- Professional designations may imply special training, while others are simply fraudulent.
- The agency is providing investors advice on understanding licenses, and designations.
- Distribution of online tools to help investors appreciate credentialing and licensing rules.
- Noted that varying exam standards to get designations, some more rigorous to earn.
- FINRA tool to find out what it takes to earn, and maintain various financial designations.
- Professional designation tool explains when investors should to be wary of those touting.

FINRA Board Remote Exams
On September 29, FINRA board agreed to use remote inspections in exam, broker check disclosures.

- Allow firms to use technology to conduct remote inspections of lower-risk offices.
- Low risk qualifying office, is limited to no more than three associated persons with no disciplinary history and no customer funds.
- Need policy and procedure to determine how the office qualifies for remote inspection.
- To amend Rule 8312 to provide additional information for registered IAs and dealers.
- Make publicly available limited data set of BrokerCheck information on individuals.
- Allow firms to include a comment about arbitration awards pertaining to the firm.
- Updated status of FINRA360 firm review, with progress on pending enforcements.
Canada

CSA Bill on Financial Sector
On October 5, CSA Quebec welcomed bill to increase its powers of supervision for financial sector.

- Quebec Government introduced Bill 141, to modernize laws covering the financial sector.
- Strengthen consumer protection, gives new oversight powers over Desjardins Group.
- Enhance compliance of Quebec managers to those set under Basel Committee guidelines.
- Applied new resolution powers to financial institutions of internal systemic importance.
- Extended coverage of Financial Services Compensation Fund, regardless of product.
- Created Consumer Advisory Committee for financial services products and their users.
- Will make observation and recommendations on regulation of products and related matters.
- Anti-retaliation measures will be a crucial component of new whistleblower program.
- Enhanced protection for whistleblowers, and improve effectiveness for measures in place.
- Complement integrated supervision model in Québec, establishing one-stop shop process.
- Integrate Chambers' activities to give training and ethics of individual representatives.
- Strengthen consumer protection, eliminate confusion, and promote coherence of rules.
- Improve effectiveness of protection, and avoid duplication of different investigations.
- New framework for selling insurance on web, to protect consumers using this sales channel.

OSFI Foreign Bank Application
On October 6, OSFI issued instructions for foreign banks, when conducting corporate transaction

- OSFI administers Part XII of the Bank Act for branches, activities of foreign banks.
- Included form for bank to get approval to have a financial establishment in Canada.
- Acquisition of control of a provincially regulated institution or another intermediary.
- Acquisition of control of, or a substantial investment in non-financial services entity.
- Establish branch of co-op, securities dealer, portfolio management service provider.
- Acquisition of control of, or a substantial investment in, a limited commercial entity.
- Establishment of limited commercial branch; or acquisition/use in Canada of ATMs.

IIROC Supervision of Trading

- Approved trade confirmation suppression requirements, after receiving no comment.
- Received two comments on wider confirms rule, one in support, other partially supported.
- Suggested criterion based on quarterly statistics on DAP/RAP trades submitted.
- IIROC stated proposed alternative was outside the scope of the criteria amendment.
- Amendments come into force on March 27, 2018, 180 days after publication of notice.
FSB 2018 Workplan Steps
On October 6, FSB issued 2018 workplan and steps for future evaluation of agreed priority reforms.

- Implementation progressed in number of areas where evaluation of the results is possible.
- FSB should conduct evaluation of effects of totality of reform on financial intermediation.
- Discussed progress of annual reviews of global systemically important banks (G-SIBs).
- Reviewed stock-take of existing cyber-security regulations and supervisory, deliver to G-20.
- Two elements of FSB workplan will address misconduct risks across the financial sector.
- FSB appointed Dietrich Domanski from BIS as Secretary General, takes up role in January 2018.

Basel NSFR Derivative Weight
On October 6, Basel allowed discretion on net stable funding ratio (NSFR) for derivative liabilities.

- Amended Basel October 2014 NSFR standards of 20% for derivatives, due to implement in 2018.
- NSFR had been assigned a 20% required stable funding (RSF) factor, across net payables.
- At national discretion, countries may now lower the value of factor, down to floor of 5%.
- On October 10, Basel lowered weight on Asian Infrastructure Bank (AIB), to apply a 0% risk.

IOSCO Non-Traditional Ratings
On October 11, IOSCO issued report on other types of CRA products, used as alternative to ratings.

- Include private ratings, confidential ratings, expected ratings, regional ratings and CDS.
- Some Other CRA Products (OCPs) share same process and features as traditional.
- Or, develop by same credit rating analysts, which determine more traditional ratings.
- OCP may be subject to similar regulatory, compliance-driven process and procedures.
- CRAs tend to create separate structures or business lines for non-regulated activities.

FSB Product Identifier Governance
On October 3, FSB proposed rules on unique product identifiers (UPIs) for trade reporting.

- Follows Basel, IOSCO September 2017 report on use of joint product identifiers (JPIs).
- Identifies key criteria and functions for UPI governance arrangements for consultation.
- Sought feedback on issues relating to UPI service providers, cost recovery, fee models.
- FSB expects to publish further consultation early 2018 on proposals for service models.
- Criteria will include governance, driven by public, regulatory interest, not complex.
- Revisions to governance are on a need-only basis, and consider impact of change.
- Change should allow for indirect or direct involvement of stakeholders, made public.
- Access to UPI Codes and UPI data standard should be unrestricted, include references.

IOSCO, ISDA CDS Determinations
On October 10, IOSCO issued guidance on ISDA CDS credit determination and auction process.

- Research is based on a review of publicly available documents, auction decisions.
- Confidential survey from buy and sell-side market participants in various regions.
- To assess functioning, and any limitations of determination and CDS auction process.
- Provisions now existed to guard against conflict, e.g., balance of buy and sell-side.
- Penalties for outlier submissions to auction, new determination manager to be appointed.
- Found no major change is necessary, but transparency of process could be increased.
- Current project will increase IOSCO understanding, more work may be needed.
- Monitor recent changes to DC, auction to consider if additional matters identified.
EBA Resolution Plan Reporting
On October 11, EBA proposed rules on information that is reported in bank resolution plans.
- Follows EBA July 2017 simplified version of resolution planning, and format for reporting.
- Proposed rules revised earlier ITS, based on resolution experience on plans submitted.
- Clarified the scope of reporting framework for BRRD, set minimum report obligations.
- Allows authorities to require more information, to create more detailed plans.
- Right to use simplified reporting obligations, where failure has limited stability impact.
- Extends EBA data point model to resolution reporting templates, to improve data quality.
- Template of general information on banking groups are to be collected at the parent level.
- Templates with quantitative information will be provided on an entity/consolidated basis.
- Information necessary to set MREL will be reported on individual basis at a bank level.

EIOPA Complex Product Sales
On October 11, EIOPA issued guidelines on execution-only sales of complex investment products.
- Follows EIOPA Feb. 2017 proposed guide on complex product sales, comments received.
- Guideline applies to execution-only sales, of insurance-based investment products (IBIPs).
- Set out appropriate use of sales by defining products which can be sold as execution-only.
- Aimed to minimize the risks from consumer detriment and mis-selling complex product.
- Criteria to identify product features that are difficult for many customers to understand.
- On nature of charges paid by customer, and ability for customer to surrender the product.

ESMA Entity Identifiers for MiFID
On October 9, ESMA issued briefing on using legal entity identifiers (LEIs), for MiFID compliance.
- Urged reporting entities, not to delay getting such an LEI identifier, ahead of new regime.
- Twenty-digit code enables identification of legal entities which conduct financial transactions.
- LEI may also be used on cross border basis, through a free, open database updated daily.
- An entity should contact their LEI issuing organization, such as local operating unit.
- A complete list of LEI issuers, is available from Global LEI Foundation (GLEIF) site.
- Entity is not obliged to use LEI issuer from own country, free to choose a preferred one.
- May choose LEI issuer based on their own specific concerns, and costs considerations.

ESMA Preparation for MiFID, Brexit
On October 9, ESMA Chair Maijoor spoke on the preparations being made for MiFID and Brexit.
- Gave opening speech to EP ECON made as part of annual hearing of the chairs of ESAs.
- MiFID implementation highlights that single rulebook needs more convergence measures.
- ESMA has issued large number of guidelines and FAQs to national authorities in 2017.
- Distinctive part of convergence work arises from ESMA efforts on consumer protection.
- Set up complex trade reporting IT systems, which facilitate technical delivery of rules.
- Optimistic on overall readiness to operate, using new framework within three months.
- However, constraints on resources required some prioritization of ESMA's tasks and projects.
- Brexit requires participants to relocate into EU-27 to maintain access to single market.
- Moves may cause stability risks, especially where no managed transition agreed for UK.

EC European Secured Notes
On October 3, EC requested EBA advice on Euro secured notes for SME banks and infrastructure.
- Follows EC July 2017 adopted review, of capital market union (CMU) action plan.
- Plan recommended framework for covered bonds, called European secured notes (ESN).
- ESNs issued by small companies (or SMEs), would fall between bonds and securitization.
- Would increase the variety of funding tools available to SME banks for infrastructure.
- Invited comments on practices for covered bonds to be mutatis mutandis with ESNs.
- Consult on appropriate capital for ESNs, in light of their features and risk-return profile.

ESMA Non-Significant Benchmark
On September 29, ESMA issued guidelines for the operators of non-significant benchmarks.
- Proposed flexible requirements for non-significant benchmarks, across four areas.
- Procedures, character, position of oversight function, no need to have external member.
- Appropriateness, verifiability of input data, preferably also based on actual transaction.
- Transparency of methodology to ensure the reliability and accuracy of the benchmark.
- Governance and control requirements for supervised contributors, designated persons.
- First three areas above were applicable to administrator of non-significant benchmarks.
- Fourth area directly applicable to supervised contributors to non-significant benchmark.
UK

**PRA Groups, Leverage Exposure**
On October 4, PRA issued consultations on groups policy, double leverage and large exposures.

- For authorized UK banks, investment firms, and qualifying parent undertakings (QPU).
- Reviewed framework to ensure it remains coherent, and fit for purpose with reforms.
- Following review, PRA considered some necessary changes to achieve the objective.
- Assessment, mitigation of risk to group resilience due to usage of double leverage.
- Offset by requirements imposed on foreign subsidiaries within consolidation groups.
- Monitor distribution of financial resource across different entities within the group.
- Change treatment of intragroup transactions, within large exposure part of PRA rulebook.

**FCA MiFID Passporting Forms**
On October 16, FCA revised MiFID forms, used by investment firms passporting in Connect system.

- Amendments to certain forms that MiFID investment firms submit to FCA and PRA.
- Firms that seek to passport under MiFID I, could use Connect, up until December 3, 2017.
- From December 4, firms can still use Connect but system will reflect MiFID II framework.
- Requires the firms to submit one passport notification for each of required countries.
- However, cannot select MiFID II specific passport activities on Connect until January 3.
- Firms seeking passport from January 3 or new authorizations should apply by email soon.

**BoE Setting Internal MREL**
On October 2, BoE proposed rules on approach to setting of internal MREL in resolution strategy.

- On minimum requirement for own funds and eligible liabilities (MREL) within groups.
- Follows November 8, BoE rules designed to allow orderly management after failure by a bank.
- Internal MREL to be instruments issued to resolution entity from other entities in group.
- BoE proposed transition to internal MREL, should be the same as for external measure.
- Interim internal MRELs apply from January 1, 2019 for all material subsidiaries of G-SIBs.
- Other firms from January 1, 2020 and end-state internal MRELs to apply from January 1, 2022.
- Proposed internal MREL above the capital requirements, for material group subsidiary.
- Expected that internal MREL for a material subsidiary will be scaled in range of 75-90%.
- Critical service providers supporting group critical functions to hold a 25% loss-capacity.

**FCA CEO Consumer Credit, Pension**
On October 4, FCA CEO Bailey spoke on consumer credit and use of long term-savings, pensions.

- Rapid growth of credit, stood out against a generally benign economic environment.
- Defaults are more likely in severe economic downturn, which would pose risk to lenders.
- Measures to reduce numbers with persistent credit cards debt, and re-balanced incentives.
- Stopped short of a cap on charges, as credit cards are seen as a form of revolving credit.
- Seek to limit problem debt, as reason FCA renewed measures for a cap on payday fees.
- Ad hoc overdraft fees can be high, complex, often greater than limits of the payday cap.
- Concerned on role of unarranged products, assess whether rule changes were needed.
- On October 16, FCA insurance director Woodall, spoke on impact from ageing UK population

**PRA CEO Woods on Geo-finance**
On October 4, PRA CEO, BoE Deputy Woods spoke on impact of geography on firms (geofinance).

- Mansion House speech, on how geography impacts shape of banks and insurance firms.
- Domestic retail banking must be structurally separate to global wholesale (via ring-fence).
- New approach will ensure banking groups were at least as strong as sum of their parts.
- Expected firms to demonstrate that they can manage the cash-flow and double leverage.
- Senior manager regime to ensure responsible persons for submissions, were up to scratch.
- Ensure cross-border banks, do not present excessive risks, to wider financial stability.

**FCA Benchmark Early Application**
On October 2, FCA issued notice on applications as benchmark administrators under EU regulations.

- UK benchmark administrators can submit a draft application forms using online system.
- FCA website has specific information for administrators on the early opening period.
- Firms may submit specific information for administrators on the early opening period.
- Firms submitting an early application must ensure that draft forms were fully completed.
- Draft forms available in the early opening period, may change when rule is finalized.
- Forms for recognition and endorsement were not available during early opening period.
- ESMA published more FAQs regarding the implementation of benchmarking regulation.
AML & Enforcement

**OFAC Sudan Sanctions License, FAQ**
On October 6, OFAC revoked certain sanctions that were applied in relation to the Sudan.

- Followed US executive order of January 2017 which revoked certain sanctions on Sudan.
- Revision applied to Sudan and Government of Sudan, and were effective October 12, 2017.
- Amendment made pursuant to executive order 13761, as amended under Order 13804.
- OFAC published the new FAQs about these revocations, as well as new general license.
- Authorized certain transactions under trade sanctions reform, Export Enhancement Act.
- US State Department also issued a statement and report related to the sanctions revocation.

**US Sanctions Venezuela Debt Issues**
On October 3, 2017, OCC issued FAQs, to explain what constitutes "profit" in the Executive Order.

- Profit is net income after tax; for a business, this is usually sales minus cost and expense.
- Payments to Government and PDVSA, for goods, services, tax, royalty, are not profits.
- Principal and interest on bond or promissory notes were not seen as distribution of profit.
- The order does not prohibit US persons from making these types of payment to Venezuela.
- However, other parts of order may still apply e.g., ban person making principal or interest payments on bonds which were issued before August 25, 2017 unless allowed under License 3.

**UK Criminal Finance Act 2017**
On September 30, 2017, UK Treasury issued notice of effectiveness for new rules against tax evasion.

- Corporations will face prosecution, for failure to prevent their staff facilitating tax evasion.
- Firmer stance on corporate fraud, designed to drive changes within culture of corporations.
- Introduced two new offences, for evasion of UK tax, and of foreign taxes, respectively.
- Both corporations and partnerships are held criminally liable if fail to prevent tax evasion.
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