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The Regulation of FinTech (Startups)

Reference: CapLaw-2016-31

Financial technologies (FinTech) are in the process of becoming the next chapter of Swiss financial market regulation. The rapid growth of the Swiss FinTech ecosystem, the public spotlight, and the changing perception on the importance and the future prospects of innovative business models in the financial industry have triggered a number of interesting regulatory developments. Currently, the center of the attention lies on FinTech startups. Some startups may have the potential to become serious competitors for traditional financial services providers. This article aims to set out the current state and the ongoing progress concerning FinTech related regulatory aspects.

By Luca Bianchi

1) Introduction

Financial technologies (FinTech) are becoming a new chapter of Swiss financial market regulation. While some FinTech business models have existed for a long time, the broad public spotlight has not focused on FinTech until the last few years. As a result of this increasing public awareness, an ongoing discussion about new business models, regulation, or deregulation of FinTech startups has developed. Furthermore, an impressive number of new FinTech startups, startup accelerators, and sector associations have been, or are in the process of being, established. Thus, interesting times lie ahead of the dynamic and rapidly growing Swiss startup scene.

2) Regulatory Framework

a) Applicability of Financial Market Regulation

Generally speaking, the regulatory framework of FinTech consists of the regular Swiss financial market regulation. In recent years, much has been written about the ongoing regulatory changes towards Switzerland's new financial market architecture. The findings of such publications shall not be repeated in this context.

However, aspiring FinTech entrepreneurs should be aware that, from a regulatory perspective, the first task before starting a new FinTech business should be the evaluation of potential licensing or approval duties as well as further regulatory restrictions for a particular FinTech business model in Switzerland (and in every other relevant country). This regulatory aspect represents a major difference to many non-financial services related technology ventures.

In particular, banking or securities dealer licenses, licenses for financial market infrastructure (*e.g.*, for exchanges, other market places, or trading systems), licenses for fund managers, fund asset managers, or regular asset managers, distribution licenses or product approvals under the Collective Investment Schemes Act (CISA), and other regulatory requirements may be crucial factors for the success of a new business model under the present or future Swiss financial market regulation.

In addition, FinTech startups must establish whether they are subject to the Anti-Money Laundering Act (AMLA). If that is the case, the startup must either become a member of a self-regulatory organization (SRO) or be supervised directly by the Swiss Financial Market Supervisory Authority (FINMA). Appropriate internal regulations would also have to be established and observed.

Furthermore, other laws and regulations such as the Data Protection Act (DPA) or the Consumer Credit Act (CCA) may be applicable depending on the specific business model.

b) Developments regarding FinTech

A few remarkable developments are noticeable specifically with respect to FinTech. As a first step, FINMA has indicated its positive attitude towards FinTech and its general intention to reduce regulatory obstacles on numerous occasions. In furtherance of this, FINMA has launched a new webpage with information for financial services providers in the FinTech space.

Before this background, the new FINMA Circular 2016/7 – "Video and online identification" should be highlighted (see CapLaw-2016-21). It specifies due diligence requirements for client onboarding via digital channels. The possibility of video or online client identification is a major step for online business models of financial services providers.

Furthermore, FINMA plans the introduction of a banking license "light" which will, presumably, allow lower regulatory requirements for certain innovative business models. In addition, a so called regulatory "sandbox" could permit startups to flourish with fewer regulatory restrictions until they reach a significant size.

Moreover, FINMA has revised its FINMA Circular 2009/1 – "Guidelines on asset management" in order to allow the conclusion of asset management agreements not only in writing (as in the past), but also in any other form demonstrable via text (*i.e.*, in digital form via the internet). The formal requirements related to collective investment schemes as well as the general mandate law continue to apply.

Besides, clarification on FINMA's practice with respect to the application of the existing regulations can be obtained by way of informal requests or applications for regulatory rulings to FINMA.

Last but not least, it should be noted that a motion on the "Risk-adjusted Limitation and Definition of the Term Deposits" is currently being processed on a political level. The proposed amendments of article 1(2) of the Banking Act (BA) as well as article 2(1)(a) of the Banking Ordinance (BO) may be beneficial to innovative FinTech startups that are not subject to the risks of the interest business of traditional banking (maturity transformation).

3) Selected Case Groups

There are a few topics that seem to be more popular than others at the moment and, therefore, deserve special attention. In particular, the following business model case groups can be identified:

- crowdfunding (*e.g.*, crowdinvesting and crowdlending);
- robo advisers;
- digital payment systems;
- crypto currencies (including bitcoins);
- blockchain; and
- big data.

Of course, the innovative FinTech space is continuously evolving. There exist many other business models that may be looked at as separate case groups. The relevant legal questions can differ substantially and are frequently interdisciplinary. Among other things, regulatory assessments must consider the specific business model, its geographic focus, as well as the type of financial services and products that shall be offered.

4) Conclusion / Outlook

Entrepreneurs, startups, traditional financial services providers, technology companies, legislative bodies, supervisory authorities, and law firms are facing a number of challenges including:

- an international and very dynamic environment with fast developments;
- digital cross-border business models may be difficult to implement due to applicable regulations of several jurisdictions;
- the existing regulatory framework does not "fit" new business models;
- new types of market participants (*e.g.*, "lean" startups) with particular characteristics and needs;

– "vague", rapidly evolving or pivoting business models;

– many new facts and circumstances, respectively, precedents;

– cyber risks;

– lower margins due to increasing competition;

– consolidation of similar business models; and

– higher costs due to the ongoing general trend towards stricter regulation of financial services.

It is expected that the trends to more digitization and regulation, as well as the "fusion" of different industry sectors (in particular, financial services, technology, telecommunication, media, and e-commerce) will continue in the near future. In particular, the ongoing regulatory developments may have a crucial impact on FinTech startups. Due to the strong momentum of this "new wave" of startup companies the need for a "customized" FinTech (de)regulation will continue to grow.

In addition, due to the current market environment and the changing investor perception the support of FinTech companies through better financing as well as the demand for financial services and products in the FinTech space will, hopefully, further increase over the next years.

Luca Bianchi (luca.bianchi@nkf.ch)

ESMA Issues Positive Advice on the Extension of the AIFMD Marketing Passport to Swiss AIFM and AIF

Reference: CapLaw-2016-32

On July 19, 2016, the European Securities and Markets Authority ("**ESMA**") published its revised advice to the European Parliament, the European Council, and the European Commission on the extension of the AIFMD marketing and management passport ("**AIFMD Passport**") to certain non-EU alternative investment fund managers ("**AIFM**") and alternative investment funds ("**AIF**"). With respect to Switzerland, ESMA confirmed its earlier positive advice and concluded that that there are no significant obstacles impeding the potential application of the AIFMD Passport to Switzerland. While this positive advice is an important step towards passporting for non-EU AIFM and AIF, it is now up to the European institutions (Parliament, Council, and Commission) to decide, based on ESMA's advice, whether or not the AIFMD Passport will be extended to third-countries such as Switzerland.

By Patrick Schärli

1) AIFMD Passport and Third-Country Rules

Directive 2011/61/EU of the European Parliament and of the Council of June 8, 2011 on Alternative Investment Fund Managers ("**AIFMD**") enables EU AIFM and AIF to market and manage funds within the European Union by way of a so-called passporting system. Under this passporting system, a EU AIF managed by a EU AIFM may be marketed freely across the European Union without the need of obtaining separate authorization from each individual EU member state's regulators. AIFMD also governs how AIF and AIFM from third countries, such as Switzerland, may access the European fund markets. As a general rule, non-EU AIFM and non-EU AIF may not (yet) rely on the AIFMD Passport when engaging in marketing and/or managing activities within the European Union. Rather, these third country AIFM and AIF have to rely on national private placement regimes ("**NPPR**") provided for in the laws of the individual member states. The requirements to be met under the various NPPR (where such NPPR are available) are quite different across the European Union's member states. Accordingly, non-EU AIFM and AIF see the AIFMD Passport as an important tool to facilitate easier access to the entire European fund market. In fact, bringing Swiss law in line with the AIFMD standards, which is one of the key requirements in ESMA's equivalence assessment, was one of the main reasons for the recent revision and amendment of the Swiss Collective Investment Schemes Act ("**CISA**") which entered into force on January 1, 2013.

AIFMD provides for the possibility to extend the AIFMD Passport to (selected) third country AIFM and AIF. More specifically, art. 37 through 41 AIFMD lay out rules that would apply for non-EU AIFM that intend to manage EU AIF or market EU or non-EU AIF using the AIFMD Passport. The AIFMD Passport will, however, only become available to third country AIFM and AIF once the European institutions decide, by way of a delegated act, to extend the AIFMD Passport to third countries. The decision to extend the marketing passport to selected countries will be based on advice by the European securities regulator ESMA and in accordance with the procedures laid out in art. 67 AIFMD. The initial deadline by which ESMA was supposed to render this advice was July 22, 2015.

2) Assessment of Third-Country Legislative Framework

a) Initial ESMA Advice of July 2015

ESMA published a first set of advice in July 2015. This first set of advice was limited to an assessment of six non-EU jurisdictions: Guernsey, Hong Kong, Jersey, Singapore, the United States, and Switzerland. In this initial set of advice, ESMA concluded that there are no significant obstacles impeding the potential application of the AIFMD Passport to Switzerland, provided, however, Switzerland enacted certain amendments to its Stock Exchange and Securities Trading Act ("**SESTA**"). These amendments relate to information sharing and cooperation between the Swiss regulator FINMA and foreign financial market supervisory authorities. The potentially problematic provision has since then been amended and transferred from the SESTA to the Financial Market Supervisory Act.

After having received this first set of advice, the European Commission asked ESMA to also conduct assessments of additional countries. In addition, the European Commission asked ESMA to include in its advice details on the capacity of non-EU regulators and their track record with respect to effective enforcement.

b) Revised ESMA Advice of July 2016

In addition to the originally assessed jurisdictions, ESMA's revised advice of July 2016 now covers six additional jurisdictions. ESMA now assessed the regulatory framework of the following jurisdictions: Australia, Bermuda, Canada, Cayman Islands, Guernsey, Hong Kong, Isle of Man, Japan, Jersey, Singapore, the United States, and Switzerland.

ESMA concluded that there are no significant obstacles impeding the application of the AIFMD Passport to five out of the twelve jurisdictions. These five jurisdictions include Canada, Guernsey, Japan, Jersey and Switzerland. With respect to the remaining jurisdictions, ESMA's advice either had certain limitations, reservations or conditions that need to be met (United States, Hong Kong, Singapore, Australia) or was not able to make a definitive assessment (Bermuda, Cayman Islands, Isle of Man).

With respect to Switzerland, ESMA confirmed its initial positive advice. Among other things, ESMA noted the positive experiences that have been reported by European national financial markets regulators on the cooperation with Swiss authorities. ESMA further noted that although the Swiss remuneration rules are simpler than their European counterparts, they are nonetheless comparable. In this respect, ESMA not only analyzed the rules as set out in the CISA and its implementing ordinances, but also reviewed FINMA circulars, in particular Circular 2010/1 on remuneration schemes. Further, ESMA also took note of the Code of Conduct issued by the Swiss Funds and Asset Management Association SFAMA, the Swiss fund industry organization. This Code of Conduct, which applies to all CISA-regulated institutions, also requires appropriate salary and remuneration policies. As noted above, ESMA concluded its assessment of Switzerland by advising the European Institutions that there are no significant obstacles impeding the application of the AIFMD Passport to Switzerland.

3) Next Steps

a) Passporting under AIFMD

While ESMA's advice is a first step towards AIFMD Passport for third country AIFM and AIF, it may still take a while before the AIFMD Passport finally becomes available to such third country AIFM and AIF. According to art. 67(6) AIFMD, the European Commission will now have to enact a delegated act specifying the date by which the AIFMD Passport will become available to (selected) third country AIFM and AIF. While AIFMD provides for a deadline of three months for the European Commission to enact such delegated act, there is still a certain degree of political uncertainty as to the decision on the extension of the AIFMD Passport. In particular, the European Commission may want to wait to extend the AIFMD Passport until such time as it has a definitive assessment as to certain important third countries such as the United States.

Even once the AIFMD Passport becomes available, a non-EU AIFM or AIF is not able to automatically access the entire European fund market. Instead, a non-EU AIFM that intends to market its non-EU AIF or that intends to manage a EU AIF requires a registration with or authorization from a so-called member state of reference. While art. 39 and 40 AIFMD generally lay out the procedure for such a registration or authorization, it remains to be seen what specific requirements and conditions the individual member states will impose on non-EU AIFM and AIF.

b) Continuing Availability of National Private Placement Rules

Irrespective of the availability of the AIFMD Passport in the future, non-EU AIFM and AIF may decide to continue carrying out their marketing activities under the relevant NPPR. In its advice, ESMA specifically addressed the continuing availability of NPPR. According to ESMA, non-EU AIFMs will be able to continue to operate under the applicable NPPR irrespective of the fact that they could also be authorized under the AIFMD Passport. ESMA also notes that with respect to the availability of NPPR there is a transitional period provided for in art. 68 AIFMD. According to this provision, within three years of the entry into force of a delegated act extending the AIFMD Passport to non-EU AIFM and AIF, ESMA shall issue another set of advice on the termination of the various NPPR. Based on such advice, the European institutions will then have to decide whether or not they want to continue permitting marketing activities under the relevant NPPR in parallel to marketing activities using the AIFMD Passport.

ESMA's confirmation of the continuing availability of NPPR is important. In particular, as noted above, using the AIFMD Passport does still require registration or authorization with the competent regulator of a reference member state. Depending on the requirements for such a registration or authorization, using a NPPR, even one with a limited scope of permissible marketing opportunities, may still seem the preferable option for many non-EU AIFM.

c) Does the AIFMD Passport Change the Way Foreign Funds Can Be Marketed in Switzerland?

While Switzerland has brought its regulatory framework mostly in line with AIFMD when it last amended the CISA, there is no passporting for European AIFM and AIF. Instead, EU funds, like any other non-Swiss funds, have to rely on the Swiss private placement regime when marketing their funds in or into Switzerland. Under this private placement regime, no registration or authorization from the Swiss regulator FINMA is required as long as the funds are only being marketed to so-called qualified investors (such as regulated financial institutions, pension funds, large corporates, and certain high-net worth individuals). Depending on the type of qualified investor approached, additional requirements (such as appointing a Swiss representative and a Swiss paying agent) apply. Conversely, marketing of non-Swiss funds to retail investors in Switzerland requires an authorization from FINMA. Such authorization requires, among other things, that FINMA has entered into a memorandum of understanding with the non-Swiss fund's home regulator. As ESMA noted in its advice, Switzerland has already concluded such memoranda of understanding with all interested EU member states.

Patrick Schärli (patrick.schaerli@lenzstaehelin.com)

U.S. Federal Reserve to Enforce U.S. Bank Resolution Regimes on Cross-Border Financial Contracts, Requiring Counterparties to Relinquish Default Rights

Reference: CapLaw-2016-33

In May 2016, the Board of Governors of the U.S. Federal Reserve System proposed new rules that, if adopted, will constitute a significant shift in the terms of financial contracts such as over-the-counter derivatives, repurchase agreement and securities lending transactions. Under the proposed rules, these qualified financial contracts would have to conform with U.S. special resolution regimes. This would require institutional investors, hedge funds and other market participants to relinquish cross-default rights, including in contracts governed by foreign law, entered into with a foreign party, or for which collateral is held outside the U.S.

The International Swaps and Derivatives Association simultaneously released its ISDA Resolution Stay Jurisdictional Modular Protocol which seeks to allow market participants to comply with the proposed rules in the U.S. and similar rules in other jurisdictions.

In this contribution, we provide a brief overview of these proposals which, if adopted, will significantly affect the terms of many financial transactions.

By Thomas Werlen / Jonas Hertner

1) Background: Too-big-to-fail issues still unresolved

Financial regulators around the globe have taken to protect the stability of the financial system by addressing the too-big-to-fail problem in two ways: by implementing measures to reduce the probability that a systemically important institution will fail, and by attempting to reduce the potential damage that such a failure would cause if it were to occur. Yet, eight years after the financial crisis the world's biggest banks still cannot be wound down in an orderly fashion, according to the Financial Stability Board's 2016 Report on the Implementation and Effects of the G20 Financial Regulatory Reforms.

One of the remaining key challenges concerns the critical time period when an insolvent bank enters bankruptcy proceedings. In an effort to facilitate a potential resolution of a failed bank without either injecting public capital or exposing the overall stability of the financial system, the U.S. Federal Reserve proposes new rules that would restrict default rights of counterparties when contracting with global systemically important banks and allow authorities to step in and take measures to mitigate potential chaos (www.federalreserve.gov/newsevents/press/bcreg/bcreg20160503b1.pdf).

2) Scope of application

By their very nature, global systematically important banks, or G-SIBs, are interconnected with other financial firms (and other G-SIBs) through large volumes of financial contracts of various types. The rules proposed by the U.S. Federal Reserve Board target several classes of these transactions that are collectively defined under U.S. law as *qualified financial contracts*.

a) Qualified Financial Contracts (QFCs)

The proposed rules define the term qualified financial contracts in accordance with section 210(c)(8)(D) of the Dodd-Frank Act. QFCs include many swaps, repurchase and reverse repurchase transactions, forward contracts, commodity contracts and securities sale, lending and borrowing transactions. The definition also includes master agreements that govern such contracts. For non-U.S. G-SIBs, the QFC definition effectively excludes transactions that are not booked at, and for which no payment or delivery may be made at, a U.S. branch or U.S. agency of the non-U.S. G-SIB. Centrally cleared QFCs are also expressly excluded from the scope of the proposed rules (even though cleared QFCs too are the source of some of the risks that the proposed rules seek to address).

b) Financial institutions directly affected by the proposal

The entities covered by the proposed rules include:

- any U.S. bank holding company that is identified as a G-SIB holding company under the Federal Reserve Board's rule establishing risk-based capital surcharges for G-SIBs;
- any subsidiary of a U.S. G-SIB described above that is not a national bank, federal savings association, federal branch or federal agency; and
- a U.S. subsidiary, U.S. branch, or U.S. agency of a non-U.S. G-SIB.

3) Default rights risks and U.S. special resolution regimes

a) Risks connected to default rights in contracts with G-SIBs

Generally, a party to a financial transaction has the right to take certain actions if its counterparty defaults on the contract. These include the right of the non-defaulting party to suspend performance of its obligation, the right to terminate or accelerate the contract, the right to set off amounts owed between the parties, and the right to seize and liquidate the defaulting party's collateral. In general, these rights allow a party to exit the QFC and thus to reduce its exposure to the counterparty, e.g., if the counterparty enters into a resolution proceeding. If the defaulting party is a G-SIB, however, the private benefit of the counterparty allowed to take certain exposure-reducing measures must be balanced against the potential damage that can result from the exercise of default rights: if, for instance, a significant number of QFC counterparties take measures based on their default rights, this might result in a disorderly resolution, affecting not only the parties to the QFCs but potentially destabilizing the wider financial system.

Destabilization of the financial system through the precipitous exercise of default rights may occur in different scenarios: The G-SIB may be forced to rapidly sell off assets and collateral underlying these contracts at depressed prices when exits of counterparties drain liquidity. Such fire sales of assets may result in or worsen balance-sheet insolvency of the G-SIB, causing the bank to fail more suddenly and reducing the amount that its other creditors could recover.

b) Restricted default rights under Title II of the Dodd-Frank Act

In the wake of the financial crisis, U.S. legislators passed a set of new laws limiting default rights in financial contracts. Most importantly, this was achieved through the enactment of the Orderly Liquidation Authority (OLA) provisions in Title II of the Dodd-Frank Act and amendments to the Federal Deposit Insurance Act (FDIA).

The OLA provides the Federal Deposit Insurance Corporation (FDIC) with the authority to serve as receiver for financial institutions whose default would pose a significant risk to financial stability. The FDIC also has receivership authority under the

FDIA. Both of these regimes in certain circumstances limit the contractual rights of counterparties facing systemically important banks and impose a one or two business day stay on the exercise of default rights by counterparties of a distressed financial institution. The stay allows the receiver or regulatory body to transfer the financial institution's rights and obligations to another entity that is capable of performing under the QFCs. Following such a transfer, generally, the non-defaulting party's right to exercise default rights as a result of its counterparty entering the proceeding is permanently stayed.

4) Goals of the proposed rules

The proposed rules identify two risk scenarios that still remain despite the entering into effect of the regimes described above in the U.S. and similar provisions adopted in other jurisdictions. The first concerns the cross-border enforceability of the U.S. special resolution regimes: what would happen if a court outside of the U.S. were to disregard the powers of U.S. regulatory agencies to prevent counterparties from exercising contractual termination rights? The second concerns risks associated with so-called cross defaults, as described below.

a) Cross-border enforceability of U.S. special resolution regimes

First, the proposed rules seek to assure that, with respect to covered entities, the U.S. special resolution regimes would be applied by courts and authorities in other jurisdictions, too. Accordingly, the rules would require covered entities to modify their contractual terms so that the U.S. special resolution regimes apply to cross-border transactions and bind parties (and, indirectly, authorities) outside of the U.S.

Specifically, counterparties in QFCs with G-SIBs would be required to opt into provisions under the U.S. special resolution regimes that allow the transfer of a QFC from the covered entity to another entity notwithstanding the standard restrictions on transfer included in derivatives, repurchase agreement and securities lending documentation.

b) Limitations on default rights under QFCs

Second, the new rules address the cross default problem. Risks in connection with cross defaults arise when an affiliate of the G-SIB entity that is a direct party to the QFC (e.g. the direct party's parent holding entity) enters a resolution proceeding. For instance, a G-SIB parent entity might guarantee the derivatives transactions of a subsidiary, and those derivatives contracts could contain cross-default rights against a subsidiary of the G-SIB that would be triggered by the entering into a resolution proceeding of the G-SIB parent entity – even though the subsidiary continues to meet its financial obligations under the contract. Accordingly, the proposal seeks to facilitate the resolution of G-SIBs by preventing counterparties of solvent affiliates of the failed entity from unravelling their contracts with solvent affiliates based solely on the failed entity's resolution.

Specifically, the proposed rules pursue a "single point of entry" strategy whereby only the parent holding company would enter into a resolution proceeding while the subsidiaries would ideally continue to operate and meet their financial obligations if they are able to do so. For this purpose, the proposed rules prohibit operating subsidiaries of G-SIBs from entering into QFCs that allow counterparties to exercise cross-default rights based on the entry into resolution of an affiliate of such subsidiaries.

c) Required amendments of terms

As a result of the proposed rules, covered entities would be required to add two distinct provisions to their QFCs (see Section 83 of the proposed rules):

- Default rights, as (broadly) defined under the proposed rules, that may be exercised against a covered entity are permitted to be exercised to no greater extent than the default rights could be exercised under the U.S. special resolution regimes if the covered QFC was governed by U.S. law and the covered entity were under a U.S. special resolution regime.

- The transfer of the covered QFC (including any interest in, or property securing, the QFC) from the covered entity will be effective to the same extent as the transfer would be effective under the U.S. special resolution regimes, also assuming U.S. law applied and the covered entity were under a U.S. special resolution regime.

5) ISDA Resolution Stay Jurisdictional Modular Protocol

In a coordinated effort, and simultaneously with the vote of the Board of Governors of the U.S. Federal Reserve System to publish the proposed rules described here, the International Swaps and Derivatives Association published the "ISDA Resolution Stay Jurisdictional Modular Protocol" (JMP) (https://www2.isda.org/functional-areas/protocol-management/protocol/24). Like other ISDA protocols, the JMP seeks to allow parties to amend a large number of contracts in one go. The JMP is the third protocol published by ISDA designed to address compliance with the requirements of special resolution regimes, following the 2014 Resolution Stay Protocol and the 2015 Universal Resolution Stay Protocol. In many respects, the JMP is similar to the ISDA 2015 Universal Resolution Stay Protocol (https://www2.isda.org/functional-areas/protocol-management/protocol/ 22), and the U.S. Federal Reserve has expressed the view that a covered entity may comply with the requirements of the proposed rules by adhering to the 2015 Universal Stay Protocol.

ISDA published the JMP in order to allow counterparties to QFCs to comply with the proposed rules and similar regulations in other jurisdictions to ensure that stays or overrides of default rights under the respective jurisdiction's own special resolution regime would be enforced by courts in other jurisdictions. Accordingly, the JMP has been developed to facilitate compliance with specific legislative or regulatory requirements in different jurisdictions (such as the proposed rules in the U.S.).

If the proposed rules are adopted, there would be clear advantages of market participants agreeing to the applicable provisions through a market-wide ISDA protocol rather than via bilateral agreements. For instance, this would increase the chances that all counterparties to QFCs with a covered entity will be stayed to the same extent in the resolution of the covered entity and thus increase the likelihood that the covered entity will be resolved in an orderly manner.

ISDA will publish a jurisdictional module for a particular jurisdiction once regulations in that jurisdiction are finalized. Parties would then be able to choose whether to adhere to specific jurisdictional modules or to the 2015 Protocol, although ISDA expects that counterparties will adhere to the respective JMPs in order to comply with the different jurisdictions' various stay regulations.

6) Conclusions

Regulations similar to the proposed rules discussed here have been adopted in other jurisdictions, too. For instance, the Swiss Federal Council requires banks to ensure that new contracts and amendments to existing contracts entered into by the group holding and individual entities, and that are subject to foreign law or designate a foreign jurisdiction, are entered into only if the counterparty recognizes a stay of termination rights in accordance with the special resolution provisions under the Swiss Financial Market Infrastructure Act.

Regulations of this kind require parties to relinquish contractual rights designed to reduce exposure in the event of default of the counterparty. Such limitations can only be justified by a legitimate policy objective. The proposal by the U.S. Federal Reserve Board discussed here complements other recent proposals intended to address the too-big-to-fail problem, including rules on total loss-absorbing capacity, long-term debt, and clean holding company requirements for G-SIBs. It focuses on facilitating an orderly resolution of a G-SIB by limiting disruptions to a distressed G-SIB through its financial contracts with its counterparties. As in other fields, U.S. regulators are seeking to expand the application of U.S. law on cross-border business relationships. With respect to qualified financial contracts involving global systemically important banks, a certain harmonization of the rules governing the resolution of these large and complex institutions is to be welcomed. Against this background, the rules appear reasonable.

It is to be expected that counterparties entering into QFCs with covered entities will be required to agree to the applicable final provisions by early 2018, either by adherence to the respective ISDA Protocol or by individually amending contract terms.

Thomas Werlen (thomaswerlen@quinnemanuel.swiss)
Jonas Hertner (jonashertner@quinnemanuel.swiss)

Placement of CHF 250 Million 0.25% Convertible Bonds by Swiss Prime Site

Reference: CapLaw-2016-34

In June 2016, Swiss Prime Site AG has successfully placed CHF 250 Million 0.25% convertible bonds due 2023. The bonds were issued at 100% of their principal amount and will mature on 16 June 2023 at 100% of their principal amount unless previously redeemed, converted or repurchased and cancelled.

Repower AG successfully completed its rights offering generating gross proceeds of CHF 171.3 million

Reference: CapLaw-2016-35

In a decision designed to harmonize and simplify its capital structure, as of 29 April 2016 Repower AG delisted its equity securities from the SIX Swiss Exchange, and subsequently converted its former bearer shares and participation certificates into standard registered shares. On 30 May 2016, Repower announced its intension to increase the company's capital with the aim of consolidating the capital base, reducing net debt and implementing the measures involved in strategically realigning the organization as an energy services business. In furtherance of this, in June 2015, Repower successfully completed its CHF 171.3 rights offering.

Completion of Capital Increase of SIX Swiss Exchange listed Airopack Technology Group AG

Reference: CapLaw-2016-36

In connection with the strategic partnership entered into by SIX Swiss Exchange listed Airopack Technology Group AG (ATG) with funds managed by affiliates of Apollo General Management, LLC, ATG on 7 July 2016 successfully completed its capital increase regarding the equity investment from the Apollo Funds with net proceeds in the amount of approximately CHF 43.5 million. ATG is a leading provider of innovative mechanical and pressure-controlled dispensing packaging technologies and systems with customers including worldwide manufacturers and suppliers of cosmetics, body care, pharmaceutical and food products.

Credit Suisse AG issues Series 2016-1 USD 400 million and Series 2016-2 USD 400 million mortgage backed notes

Reference: CapLaw-2016-37

On 24 August 2016, Mortgage Repurchase Agreement Financing Trust, a Delaware statutory trust issued USD 400 m Series 2016-1 Notes and 400 m Series 2016-2 notes which are backed by a revolving pool of mortgage loans purchased by the Issuer under a repurchase agreement from Credit Suisse AG, Cayman Branch.

UBS Group AG completed its issuance of USD 1.1 billion 7.125% Tier 1 Capital Notes

Reference: CapLaw-2016-38

On 10 August 2016, UBS Group AG completed its issuance of USD 1.1 billion 7.125% Tier 1 Capital Notes.

3. Convention on Compliance in the Financial Services Industry (3. Tagung zur Compliance im Finanzdienstleistungsbereich)

Tuesday, 1 November 2016, Kongresshaus Zurich

http://www.eiz.uzh.ch/uploads/tx_seminars/Programm_Compliance_01.11.2016_01.pdf

FinTech-Startups: (Legal) perspectives for the financial services industry of the future

Thursday, 10 November 2016, Niederer Kraft & Frey AG

http://www.nkf.ch/en/news/?open=info

Capital Markets and Transactions XII (Kapitalmarkt – Recht und Transaktionen XII)

Wednesday, 23 November 2016, Kongresshaus Zurich

http://www.eiz.uzh.ch/uploads/tx_seminars/Programm_Kapitalmarkt_23.11.2016.pdf

GesKR Seminar on the Financial Services Act (FIDLEG) and Financial Institutions Act (FINIG)

Part 1: The New Prospectus Regime (Tagung 1: Das neue Prospektrecht gemäss FIDLEG)
Tuesday, 1 November 2016, 09:00-13:45, SIX Convention Point, Zurich

Part 2: Financial Services Act (FIDLEG) and Financial Institutions Act (FINIG) (other than the new prospectus regime) (Tagung 2: FIDLEG und FINIG (ohne Prospektrecht))
Friday, 2 December 2016, 09.00-17.00, SIX Convention Point, Zurich

https://www.dike.ch/image/data/Veranstaltungen/GesKR_Tagung_FIDLEG_FINIG_2016_Programm.pdf