



Weekly Newsletter

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Bank & Thrift

Agencies Extend Comment Period for Volcker Rule

The Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation and the Securities and Exchange Commission (collectively, the “Agencies”) have announced the extension of the comment period for their joint proposed rule to implement Section 619 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the “Dodd-Frank Act”), which is commonly referred to as the Volcker Rule. The comment period will now close February 13, 2012.

The Volcker Rule requires the Agencies to implement certain prohibitions and restrictions on the ability of a banking entity and certain nonbank financial companies to engage in proprietary trading and have certain interests in, or relationships with, a hedge fund or private equity fund.

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Basel Committee Oversight Body Agrees to Actions Regarding Monitoring Implementation of the Basel Framework and Introducing the Liquidity Coverage Ratio

The Group of Governors and Heads of Supervision (“GHOS”), the oversight body of the Bank for International Settlements’ Basel Committee on Banking Supervision (“Basel Committee”) met on January 8, 2012 and agreed to the following actions:

- The GHOS endorsed the Basel Committee's comprehensive approach to monitoring and reviewing implementation of the Basel regulatory framework. In particular, the Basel Committee will monitor, on an ongoing basis, the status of members' adoption of the globally-agreed Basel rules. It will review the compliance of members' domestic rules or regulations with the international minimum standards in order to identify differences that could raise prudential or level playing field concerns. The Basel Committee will also review the measurement of risk-weighted assets to ensure consistency in practice across banks and jurisdictions.
- The GHOS endorsed the Basel Committee's agreement to publish the results of each member country's implementation of all components of the Basel regulatory framework, including Basel II, Basel II.5 and Basel III, based on a detailed peer review.
- Each member country has committed to undergo a peer review. The GHOS agreed that the initial peer reviews should assess implementation in the European Union, Japan and the United States, and commence in the first quarter of 2012.
- The GHOS reaffirmed its commitment to introduce the Liquidity Coverage Ratio (“LCR”) as a minimum standard in 2015 and fully supported the Basel Committee's proposed focus, course of action and timeline. The Basel Committee is to finalize and publish recommendations by the end of 2012 related to specific concerns regarding the pool of high-quality liquid assets as well as some adjustments to the calibration of net cash

outflows (not expected to materially change the framework or underlying approach). The Basel Committee is also instructed to clarify that liquid assets accumulated in normal times are intended to be used in times of stress and to provide guidance on circumstances that would justify the use of the pool of assets.

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Basel Committee Proposes Rule to Address Basel III “Own Credit Risk Adjustments”

The Bank for International Settlements’ Basel Committee on Banking Supervision (“Basel Committee”) released a consultative document on December 23, 2011 that seeks public comment on a proposal to fully deduct debit valuation adjustments (“DVAs”) for over-the-counter derivatives and securities financing transactions in the calculation of Common Equity Tier 1. The proposal is intended to address paragraph 75 of the Basel III rules, which require a bank to “[d]erecognise in the calculation of Common Equity Tier 1, all unrealised gains and losses that have resulted from changes in the fair value of liabilities that are due to changes in the bank’s own credit risk”. The Basel Committee states that a deterioration in a bank’s own creditworthiness can lead to an increase in the bank’s common equity as a result of a reduction in the value of its liabilities and that the Basel III seeks to prevent this. Comments are requested by February 17, 2012.

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OCC Rescinds Certain OTS Documents to Facilitate OTS Integration

On January 6, the Office of the Comptroller of the Currency (“OCC”) released Bulletin 2012-2 to announce the rescission of a number of documents previously issued by the Office of Thrift Supervision (“OTS”), including CEO Memos, Regulatory Bulletins, Thrift Bulletins and documents related to the Trust Handbook. The OCC explains that it intends to produce one common set of supervisory policies that will apply to both national banks and Federal savings associations. The rescinded documents are listed in a table that also identifies the OCC documents that should be used in their place, if appropriate, and also the reason for the rescission.

Also on January 6, the OCC released Bulletin 2012-3 to announce that it was rescinding all outstanding OTS Transmittal Letters.

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OCC Releases 2012 Schedule for Community Bank Director Workshops

The Office of the Comptroller of the Currency (“OCC”) announced its 2012 schedule for Community Bank Director Workshops to be conducted throughout the country over the course of the year for benefit of directors of national community banks and Federally-chartered savings associations with total assets of \$5 billion or less. Four separate workshops will be offered:

"A Director's Challenge: Mastering the Basics," "Directors: Where is the Risk in Your Bank," "Compliance Risk: What Directors Need to Know," and "Credit Risk: A Director's Focus."

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Enterprise & Consumer Compliance

Richard Cordray Becomes CFPB Director in Recess Appointment; Raj Date Named Deputy Director

On January 4, 2012, President Obama appointed Richard Cordray to serve as the Director of the Bureau of Consumer Financial Protection ("CFPB"). The appointment was made as a recess appointment under the President's executive authority but has been subject to some question by certain lawmakers and the public regarding its legality based on whether the Congress was actually recessed.

On January 12, the Department of Justice publicly released a memo dated January 6, 2012 that concluded the pro-forma sessions conducted by the Senate, where no business was conducted, were not sufficient to interrupt the intrasession recess and that the President had the authority to exercise his recess appointment. The opinion also noted that such an interpretation and the director's appointment could still be challenged in the courts.

As a recess appointee, Mr. Cordray may serve as CFPB Director until the end of the next session of Congress, which is December 2013 rather than the statutory five-year term.

On January 5, Director Cordray appointed Raj Date as CFPB Deputy Director. Prior to the appointment, Mr. Date served as the Special Advisor to the Secretary of the Treasury on the Consumer Financial Protection Bureau.

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CFPB Announces Launch of Nonbank Supervision Program; Issues Examination Procedures for Mortgage Originations

With the appointment of a Director, the Bureau of Consumer Financial Protection ("CFPB") now has the power to implement its supervisory authority over nondepository providers of consumer financial products and services. Director Cordray announced the launch of the CFPB's nonbank supervision program on January 5, 2012. The program is to be conducted in the same manner as the CFPB's bank examination program and will be guided by the CFPB's recently released Supervision and Examination Manual.

Pursuant to Section 1024 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, the CFPB has the authority to supervise certain nonbanks regardless of size, including mortgage companies (originators, brokers, and servicers including loan modification or foreclosure relief services); payday lenders; and private education lenders. The CFPB is prepared to begin this process immediately.

Section 1024 also gives the CFPB the authority to supervise “larger participants” of markets for other consumer financial products and services that the CFPB defines by rule. A proposed rule to define a “larger participant” and to identify the markets to be considered is expected to be released soon.

In comments before The Brookings Institution on January 5, Director Cordray stated “We will begin dealing fact-to-face with payday lenders, mortgage originators, private student loan lenders, and other firms that often compete with banks but have largely escaped any meaningful federal oversight...our new supervision program may be a challenge for them. But we must establish clear standards of conduct so that all financial providers play by the rules.”

On January 11, the CFPB released examination procedures for all bank and nonbank mortgage originators, including lenders and brokers. The new procedures are intended to supplement the CFPB’s Supervision and Examination Manual. They describe the types of information examiners will gather to evaluate mortgage originator’s policies and procedures, assess compliance with applicable laws and identify risks to consumers throughout the mortgage origination process (beginning with initial advertising and marketing practices straight through to closing practices). The CFPB released examination procedures specific to mortgage servicing in October 2011, which are also applicable to banks and nonbanks.

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CFPB Releases Guidance on the Treatment of Confidential Information

The Bureau of Consumer Financial Protection (“CFPB”) released Bulletin 12-01 on January 4 to provide guidance on its collection of information through the supervisory process and the confidentiality protections provided supervised institutions in this process. The guidance applies to banks and nonbanks.

As outlined in the guidance, the CFPB,

- Has broad authority to require reports and conduct examination of its supervised institutions. The CFPB uses this authority for certain purposes, including assessing compliance with Federal consumer financial laws, obtaining information about activities subject to such laws, and assessing associated risks to consumer and markets.
- May request any information it determines would serve one or more of these purposes and supervised institutions are required to provide all documents and information requested. The CFPB adds that provision of such information pursuant to a supervisory request “would not waive any privilege that may attach to such information.”
- Will treat information obtained through the supervisory process as confidential and privileged. The CFPB will share confidential supervisory information with prudential regulators and State regulators that share supervisory jurisdiction over an institution supervised by the CFPB.

- Will share confidential supervisory information with “law enforcement agencies, including State Attorneys General, only in very limited circumstances and upon review of all of the relevant facts and considerations.” In addition, “the Bureau will not routinely share confidential supervisory information with agencies that are not engaged in supervision.”

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Regulatory Reporting

Fed Releases Final Guidance for SLHC Regulatory Reporting Requirements

The Federal Reserve Board (“Fed”) released a Notice of Information Collection on December 23, 2011 that addresses the regulatory reporting requirements applicable to savings and loan holding companies (“SLHCs”), which were transferred to the supervision of the Fed on July 21, 2011. In August, the Fed had issued a proposal that would have generally required SLHCs to use certain reports currently used by bank holding companies (“BHCs”).

Under the final notice, a limited number of SLHCs are exempt from most regulatory reporting using the Fed’s existing regulatory reports. These exempt SLHCs would continue to submit Schedule HC, which is currently a part of the Thrift Financial Report, and the OTS Form H-(b)11 Annual/Current Report. Exempt firms will also file the Fed’s FR Y-6, Annual Report for Bank Holding Companies, or the FR Y-7, Annual Report for Foreign Banking Organizations, beginning with fiscal years ends beginning December 31, 2012. Broadly, exempt SLHCs would include:

- Grandfathered SLHCs where the savings association subsidiaries’ consolidated assets make up less than 5 percent of the total consolidated assets of the grandfathered SLHC on an enterprise-wide basis for any of the four previous quarters and where more than 50 percent of the assets of the grandfathered unitary SLHC are derived from activities that are not otherwise permissible under HOLA (the *Home Owners Loan Act*) on an enterprise-wide basis; and
- SLHCs where more than 50 percent of the assets of the SLHC are derived from the business of insurance on an enterprise-wide basis and the SLHC does not submit reports to the SEC.

A two-year phase-in period is provided for regulatory reporting for all other SLHCs, beginning with the March 31, 2012 reporting period. During 2012, SLHCs that are not initially excluded from reporting will be required to submit the FR Y-9 series of reports and one of two year-end annual reports (FR Y-6 or FR Y-7 reports). During 2013, these SLHCs will be required to submit all regulatory reports that are applicable to the SLHC, depending on the size, complexity, and nature of the holding company. All SLHCs submitting reports to the Fed will also continue to submit the OTS Form H-(b)11 until notified otherwise by the Fed.

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Securities & Investment Management

CFTC Final Order Amends the Effective Date for Swap Regulation

The Securities and Exchange Commission ("SEC") published a final rule on December 29, 2011 that amends the accredited investor standards under the *Securities Exchange Act of 1933* to conform to the requirements of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the "Dodd-Frank Act"). In particular, the new rule amends the SEC's rules to require that the value of a person's primary residence be excluded for purposes of determining whether the person qualifies as an "accredited investor" on the basis of having a net worth in excess of \$1 million.

In addition, under the amended net worth calculation, indebtedness secured by the person's primary residence, up to the estimated fair market value of the primary residence, is not treated as a liability, unless the borrowing occurs in the 60 days preceding the purchase of securities and is not in connection with the acquisition of the primary residence. In such cases, the debt secured by the primary residence must be treated as a liability in the net worth calculation. Similarly, any indebtedness secured by a person's primary residence in excess of the property's estimated fair market value is treated as a liability under the new definition.

An exception is available for any calculation of a person's net worth made in connection with the exercise of rights to purchase securities, provided that:

- Such rights were held by the person on July 20, 2010;
- The person qualified as an accredited investor on the basis of net worth at the time the person acquired such rights; and
- The person held securities of the same issuer, other than such rights, on July 20, 2010.

The final rule becomes effective February 27, 2012.

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Enforcement Actions

The Securities and Exchange Commission ("SEC") and Commodity Futures Trading Commission ("CFTC") have recently announced the following enforcement actions:

- The SEC charged an investment adviser with fraud for soliciting fictitious securities through a social media site. The SEC separately issued a Risk Alert, Investor Alert and an Investor Bulletin to highlight the risks associated with the use of social media.
- The SEC charged a financial services firm and three of its senior executives for fraudulent disclosure and improper accounting.

- The SEC charged a former securities trader with orchestrating an illegal trading scheme that inserted a middle-man into securities transactions for the purposes of generating additional fees. The trader agreed to pay \$1 million to settle the charges and his firm agreed to pay \$4 million for failing to properly supervise him.
- The CFTC imposed fines against a foreign firm for illegally soliciting the public to trade in foreign exchange transactions and for operating as a Retail Foreign Exchange Dealer without being registered with the CFTC.
- The CFTC obtained a Federal court consent order requiring a CFTC defendant to pay \$2.69 million in restitution and civil money penalties for defrauding customers and misappropriating funds in a foreign exchange Ponzi scheme.
- The CFTC charged a futures commission merchant \$700,000 for submitting inaccurate large trader reports and for violating an earlier order to improve the accuracy of its large trader reporting.

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Insurance

Press Reports Claim New York State Insurance Department Investigating Force-Placed Insurance Practices

Press reports indicate that the New York Department of Financial Services is investigating force-placed insurance practices at banks and insurance companies. The reports state that the focus on the investigation is on pricing practices and the relationships between banks, their affiliate insurance agents and the insurance companies supplying the coverage.

Force-placed insurance is insurance coverage provided to cover property secured by a mortgage loan when the homeowner's coverage lapses.

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Recent Supervisory Actions against Financial Institutions

Last Updated: January 17, 2012

| Agency | Institution Type | Action | Date | Synopsis of Action |
|---|----------------------|---------------------------------------|-------|--|
| Federal Reserve Board | State Member Bank | Written Agreement | 01/10 | The Federal Reserve Board entered into a Written Agreement with an Arizona state member bank to address deficiencies related to asset improvement, allowance for loan and lease losses, capital, and dividends |
| Federal Reserve Board | Bank Holding Company | Written Agreement | 12/27 | The Federal Reserve Board entered into a Written Agreement with a Louisiana-based bank holding company to address dividends and distributions and debt and stock redemptions to ensure that it serves as a source of strength for its national bank and nonbank subsidiaries. |
| Federal Reserve Board | State Member Bank | Civil Money Penalty | 12/22 | The Federal Reserve Board issued an Order of Assessment of Civil Money Penalty against an Ohio state member bank to address violations of the National Flood Insurance Act. |
| Federal Reserve Board | State Member Bank | Civil Money Penalty | 12/22 | The Federal Reserve Board issued an Order of Assessment of Civil Money Penalty against a Virginia state member bank to address violations of the National Flood Insurance Act. |
| Federal Reserve Board | Bank Holding Company | Written Agreement | 12/13 | The Federal Reserve Board entered into a Written Agreement with a Texas-based bank holding company and a Nevada-based bank holding company that jointly own a state nonmember bank. The agreement addressed dividends and distributions, debt and stock redemptions and capital to ensure that they serve as a source of strength for their state chartered nonmember bank subsidiary. |
| Federal Reserve Board | Bank Holding Company | Written Agreement | 12/13 | The Federal Reserve Board entered into a Written Agreement with a Minnesota-based bank holding company that addressed dividends and distributions, debt and stock redemptions and capital to ensure that it serves as a source of strength for its state chartered nonmember bank subsidiary. |
| Office of the Comptroller of the Currency | National Bank | Civil Money Penalty; Formal Agreement | 12/08 | The Office of the Comptroller of the Currency assessed civil money penalties (\$20 million) against a national bank for the involvements of two banks acquired by the national bank in a fraudulent scheme to market and sell certain derivative financial products to municipalities. The OCC also executed a formal agreement with the bank that requires it to implement a detailed plan to enhance and strengthen its policies, procedures, and internal controls related to competitively bid transactions conducted within the bank's Municipal Derivatives Marketing and Trading groups, and to take steps to ensure that adequate policies, procedures, and controls are in place related to transactions involving competitive bidding bank-wide. |

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