



Weekly Newsletter

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Bank & Thrift

Fed Governor Speaks at Risk Symposium on Supervisory Stress Testing and Capital Planning Processes

Federal Reserve Board ("Fed") Governor Daniel Tarullo spoke before the Federal Reserve Bank of Chicago's Annual Risk Conference on April 10, 2012. His remarks addressed "dynamic capital supervision" and focused on stress testing and firm-specific capital planning. He outlined the Fed's approach to employing these supervisory tools since the financial crisis in 2008, and in particular, he outlined the process and results for the 2009 Supervisory Capital Assessment Program ("SCAP") (which included the 19 largest bank holding companies) and the 2011 and 2012 Comprehensive Capital Analysis and Review ("CCAR" – which also included the 19 largest bank holding companies and some other institutions).

Governor Tarullo noted that the Fed is now working to make substantive and procedural improvements to the testing process. He said:

- The timing of the CCAR will change, so that the decisions on objection or non-objection will apply to capital actions beginning in the second quarter of 2013. That is a shift from the first two CCARs, in which the supervisory responses covered first quarter capital plans, but those responses were not delivered until late in that quarter.
- Because the regulatory reporting mechanisms for data collection are now in place, the Fed will be able to begin the analysis earlier, providing more time to both firms and supervisors to run the stress tests. In addition, because the reports will be filed quarterly, supervisors expect they will be able to monitor more effectively how firms are performing relative to their projected baselines, which will enable the Fed to require resubmissions of capital plans in a more timely way, should conditions change materially at an individual firm or more broadly in the industry.

In closing, Governor Tarullo indicated that the nature of stress testing employed in the CCAR was appropriate for large bank holding companies. For bank holding companies with between \$10 billion and \$50 billion in consolidated assets he said, "the nature of any stress testing requirements will be quite different from that used in the CCAR" though provided no explanation. He did not expect banks with assets of \$10 billion or less to be subject to stress testing of any kind.

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New Comptroller of the Currency Takes Office

Thomas J. Curry took office as the 30th Comptroller of the Currency on April 9, 2012. Mr. Curry has served as a Director of the Federal Deposit Insurance Corporation ("FDIC") since January 2004. Prior to that, he served as the Commissioner of Banks for the state of Massachusetts, Chairman of the Conference of State Bank Supervisors, and on the State Liaison Committee of the Federal Financial Institution Examination Council.

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OCC Guidance Addresses Troubled Debt Restructurings

The Office of the Comptroller of the Currency ("OCC") released Bulletin 2012-10 on April 5, 2012 to provide guidance on the accounting standards and reporting requirements for troubled debt restructurings ("TDR"), especially those related to loan renewals and extensions of substandard commercial loans. The OCC notes that the guidance does not constitute new policy but rather serves as a refresher of the relevant concepts for evaluating whether a loan modification represents a TDR and the appropriate related reporting for Call Report purposes.

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OCC Schedules Bank Director Workshops

The Office of the Comptroller of the Currency announced that it will host a workshop for directors of nationally chartered community banks and Federal savings associations in Atlanta, Georgia, on May 14, 15 and 16.

The workshop is entitled, "*A Director's Challenge: Mastering the Basics*," and is intended to provide practical information to expand bank directors' skills and understanding of issues facing their banks. The workshop is geared primarily to directors of national community banks and Federal savings associations with assets of less than \$5 billion who would like to review the fundamental requirements of their position.

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Enterprise & Consumer Compliance

CFPB Issues Bulletin on Relationships with Service Providers

The Bureau of Consumer Financial Protection ("CFPB") released Bulletin 2012-03 on April 13, 2012 to outline the CFPB's supervisory and enforcement authority over service providers associated with the entities under the CFPB's supervisory and enforcement authority (i.e., large insured depository institutions and insured credit unions and their affiliates (collectively "banks"), and certain nonbank entities). Title X of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("Dodd-Frank Act") grants the CFPB the authority to oversee these "supervised service providers" and the Bulletin states that the CFPB intends to fully exercise its authority, including the authority to examine the supervised service provider's operations on site as well as its compliance with Title X's prohibition on unfair, deceptive or abusive acts or practices.

The CFPB expects supervised banks and nonbanks to have an effective process for managing risks of service provider relationships including ensuring that the business relationships do not present “unwarranted risks to consumers.” Banks and nonbanks should:

- Conduct thorough due diligence to ensure that the service provider understands and is capable of complying with Federal consumer financial laws.
- Review the service provider’s policies, procedures, internal controls and training materials to ensure appropriate oversight and training of employees and agents is in place.
- Set clear expectations and enforceable consequences in the service provider contract for violations of any compliance-related responsibilities.
- Establish internal controls and monitoring to ensure the service provider is complying with Federal consumer financial laws.
- Take prompt action to address any violations identified through monitoring, including terminating the relationship, if appropriate.

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CFPB Proposes Rule to Limit Credit Card Fees in the First Year

The Bureau of Consumer Financial Protection (“CFPB”) published a proposed rule on April 12, 2012 that seeks comment on an amendment to Regulation Z that would limit the amount of credit card fees that a credit card issuer may require a consumer to pay with respect to an account during the first year after the account is opened.

The *Credit Card Accountability Responsibility and Disclosure Act of 2009* (the “Credit Card Act”) amended the Truth in Lending Act to limit certain fees charged during the first year after an account is opened to an amount no more than 25 percent of the initial credit limit. The Federal Reserve Board (“Fed”) issued a final rule in 2010 to amend Regulation Z, which implements the Truth in Lending Act, to implement the Credit Card Act provision. The Fed issued a second final rule in April 2011 that amended the earlier 2010 rule to expand the limitation to include fees charged prior to opening an account. This second rule was subsequently challenged in a July 2011 lawsuit and a judge “granted a motion for preliminary injunction preventing the amendment from taking effect, citing the plain language of the statute that applied restrictions on fees only after a credit card account has been opened by a customer.”

Responsibility for the Truth in Lending Act was transferred to the CFPB in July 2011 and the CFPB’s current proposed rule would conform the language of Regulation Z to the court ruling. Comments are requested no later than June 11, 2012.

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CFPB Expands Student Loan Initiative

The Bureau of Consumer Financial Protection (“CFPB”) released an interactive, online tool on April 9, 2012 that is part of its Know Before You Owe initiative for student loans. The tool, the *Financial Aid Comparison Shopper*, is intended to help students compare the costs of post-secondary education across multiple schools. It is available on the CFPB Web site. The CFPB also notes that it accepts consumer complaints for student loans.

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CFPB Announces Plans to Propose Mortgage Servicing Rules

On April 9, 2012, the Bureau of Consumer Financial Protection (“CFPB”) announced that it intended to issue proposed rules during the summer that would address mortgage servicing issues. In particular, the CFPB states that it is considering proposals that would increase servicer transparency and accountability.

With regard to transparency, the CFPB is considering:

- Changes to the monthly mortgage statements, including alerts for delinquent borrowers;
- Disclosures about interest rate adjustments;
- Options for avoiding force-placed insurance; and
- Information and options for avoiding foreclosure.

With regard to accountability, the CFPB is considering rules to:

- Credit payments when received;
- Require policies and procedures to keep information accurate and current;
- Acknowledge and correct errors in a reasonable timeframe; and
- Provide delinquent borrowers with direct and ongoing access to a foreclosure prevention team.

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Securities & Investment Management

Enforcement Actions

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

- The SEC charged a firm and 11 investors with market manipulation.
- The SEC charged a firm for failing to have adequate policies and procedures in place to control the risk of material, nonpublic information available to firm personnel being distributed to clients.
- In two separate cases, the SEC charged individuals with fraudulently operating a Ponzi scheme targeted at members of a religious community.
- The CFTC announced the filing and simultaneous settlement of charges against a registered futures commission merchant, for failing to diligently supervise the handling by its officers, employees, and agents of an account used in a multi-million dollar Ponzi scheme.

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Recent Supervisory Actions against Financial Institutions

Last Updated: April 16, 2012

Agency	Institution Type	Action	Date	Synopsis of Action
Federal Reserve Board	Bank Holding Company	Written Agreement	04/12	The Federal Reserve Board entered into a Written Agreement with a New Mexico-based bank holding company to address dividends, distributions and other payments, and debt and stock redemptions to ensure that it serves as a source of strength for its state nonmember bank and nonbank subsidiaries.
Federal Reserve Board	Bank Holding Company	Written Agreement	04/12	The Federal Reserve Board entered into a Written Agreement with a California-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.
Office of the Comptroller of the Currency	National Bank	Cease and Desist	04/05	The Office of the Comptroller of the Currency issued a cease and desist order against a national bank for violations of the Bank Secrecy Act and its underlying regulations. In particular, the bank's compliance program was found to have deficiencies related to internal control, customer due diligence, independent BSA and money laundering audit function, monitoring of its remote deposit capture and international cash letter instrument processing in connection with foreign correspondent banking, and suspicious activity reporting related to that monitoring.
Federal Reserve Board	Bank Holding Company; Money Transmitter	Cease and Desist; Civil Money Penalty	04/02	The Federal Reserve Board issued a consent Order to Cease and Desist and Order to Assess Civil Money Penalty with a foreign bank holding company and its money transmitter subsidiary to resolve allegations that the bank holding company operated representative offices in the U.S. without required notices or approvals under the International Banking Act.
Federal Reserve Board	Bank Holding Company; State Member Bank	Written Agreement	03/29	The Federal Reserve Board entered into a Written Agreement with a Pennsylvania bank holding company and its State member bank subsidiary to address deficiencies related to board oversight, management review, credit risk management, lending and credit administration, asset improvement, allowance for loan and lease losses, capital planning, internal audit, liquidity and funds management, interest rate risk management, dividends and payments and debt and stock redemptions.
Federal Reserve Board	Bank Holding Company	Written Agreement	03/22	The Federal Reserve Board entered into a Written Agreement with a Minnesota-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 state nonmember bank and nonbank subsidiaries.
Federal Reserve Board	Bank Holding Company	Written Agreement	02/23	The Federal Reserve Board entered into a Written Agreement with a Minnesota-based bank holding company to address allowance for loan and lease losses, dividends and distributions, and debt and stock redemptions to ensure that it serves as a source of strength for its state nonmember bank and nonbank subsidiaries.

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