



Weekly Newsletter

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Bank & Thrift

Fed Finalizes Risk Management Standards for Financial Market Utilities Designated as Systemically Important

On July 30, 2012, the Federal Reserve Board (“Fed”) approved the release of a final rule that creates Regulation HH, *Designated Financial Market Utilities*, and establishes risk-management standards for certain financial market utilities (“FMUs”) designated as systemically important by the Financial Stability Oversight Council. The final rule also establishes requirements for covered FMUs to provide the Fed with advance notice of proposed changes to their rules, procedures, or operations that could materially affect the nature or level of risk the entities present.

The Fed notes that the final rule is substantively similar to its April 2011 proposed rulemaking, with two exceptions. The final rule includes a new provision that would allow the Fed to waive the application of certain Regulation HH standards to a particular type of designated FMU, where the risks presented by or the design of that designated FMU would make application of certain standards inappropriate. In addition, the Fed revised the illustrative list of changes that do not require an advance notice, in part to include changes to a designated FMU's fees, prices, or other charges.

The risk-management standards under Regulation HH govern the operations related to the payment, clearing, and settlement activities of designated FMUs, except those registered as clearing agencies with the Securities and Exchange Commission (“SEC”) or as derivatives clearing organizations with the Commodity Futures Trading Commission (“CFTC”). The risk-management standards are based on the recognized international standards developed by the Committee on Payment and Settlement Systems (“CPSS”) and the Technical Committee of the International Organization of Securities Commissions (“IOSCO”) that were in existence at the time of the proposed rulemaking and were incorporated previously into the Fed's Policy on Payment System Risk.

The final rule will become effective on September 14, 2012.

For additional information please contact Hugh Kelly, Principal: hckelly@kpmg.com or Philip Aquilino, Director: paquilino@kpmg.com

CPSS and IOSCO Release Consultative Paper on Recovery and Resolution of Financial Market Infrastructures

The Committee on Payment and Settlement Systems (“CPSS”) and the Board of the International Organization of Securities Commissions (“IOSCO”) released a consultative report on July 31, 2012 that addresses *Recovery and Resolution of Financial Market Infrastructures*. The CPSS and IOSCO state the purpose of the report is to outline the features of effective recovery and resolution regimes for financial market infrastructures (“FMIs”) in accordance with the *Key Attributes of Effective Resolution Regimes for Financial Institutions* (“Key

Attributes”) released by the Financial Stability Board in 2011, as well as to promote a common understanding and interpretation of the application of the Key Attributes to the resolution and recovery of FMIs. They state an effective resolution regime must enable resolution without systemic disruption or exposing the taxpayer to loss.

In April 2012, the CPSS and IOSCO published *Principles for Financial Market Infrastructures*, which require FMIs to have effective strategies, rules and procedures to enable them to recover from financial stresses

Comments on the consultative report are requested no later than September 28, 2012.

The report defines “FMIs” to encompass a broad range of different providers of infrastructure services to markets and market participants, including the recording, clearing and settlement of payments, securities, derivatives and other financial transactions. The CPSS and IOSCO note that different activities can expose FMIs to fundamentally different types and levels of risk, including legal, credit, liquidity, general business, custody, investment and operational risks. Further, they state a key distinction exists between FMIs that take on credit risk as principal (such as central counterparties) and those that do not (such as trade repositories). The nature of the FMI and the risks it faces will determine the necessary scope and features of its recovery plans and the appropriate tools to be applied in a resolution.

For additional information please contact Hugh Kelly, Principal: hckelly@kpmg.com or Philip Aquilino, Director: paquilino@kpmg.com

Enterprise & Consumer Compliance

CFPB Seeks Suggestions for Cases to Consider for Amicus Briefs

Through an August 2, 2012 blog post, the Bureau of Consumer Financial Protection (“CFPB”) has solicited public suggestions for specific court cases for which the CFPB might consider submitting amicus briefs. The CFPB states that it is looking for “cases with one or more important legal questions about the interpretation or application of a federal consumer financial protection statute or regulation that we interpret and enforce.” To date, the CFPB has filed six amicus briefs, which are posted on its Web site.

For more information, contact Linda Gallagher, Principal: lgallagher@kpmg.com or Kari Greathouse, Director: cgreathouse@kpmg.com.

Agencies Extend Submission Deadline for Requests under the Independent Foreclosure Review

The Federal Reserve Board and the Office of the Comptroller of the Currency recently announced the extension of the deadline for the submission of consumer requests for review under the Independent Foreclosure Review to December 31, 2012. The new deadline is

intended to provide additional time for borrowers to request a review if they believe they suffered financial injury as a result of errors in foreclosure actions on their homes in 2009 or 2010 by one of the 14 servicers covered by enforcement actions issued in April 2011.

As part of those enforcement actions, the agencies required the mortgage servicers to retain independent consultants to conduct a comprehensive review of foreclosure activity in 2009 and 2010 to identify borrowers who may have been financially injured due to errors, misrepresentations, or other deficiencies in the foreclosure process. If the review finds that financial injury occurred, the borrower may receive remediation such as lump-sum payments, suspension or rescission of a foreclosure, a loan modification or other loss mitigation assistance, correction of credit reports, or correction of deficiency amounts and records. Agency guidance indicates that lump-sum payments can range from \$500 to as much as \$125,000 plus equity, depending on individual circumstances.

For more information, contact Linda Gallagher, Principal: lgallagher@kpmg.com or Kari Greathouse, Director: cgreathouse@kpmg.com.

Capital Markets & Investment Management

SECD Releases Report on the Municipal Securities Market

On July 31, 2012, the Securities and Exchange Commission (“SEC”) released a *Report on the Municipal Securities Market*. The report summarizes a comprehensive review of the municipal securities market that was initiated in 2010 with particular focus on two areas of concerns identified by market participants – disclosure and market structure. The report also includes recommended actions that would require legislative changes, SEC rulemakings, Municipal Securities Rulemaking Board (“MSRB”) rulemakings and / or enhanced industry “best practices.”

The SEC indicates that in January 2012, there were more than one million different municipal bonds outstanding totaling \$3.7 trillion. Seventy-five percent of these bonds were held by individual “retail” investors. However, despite this size and importance, the municipal securities market has not been subject to the same level of regulation as other sectors of the U.S. capital markets due to broad exemptions under Federal securities laws for municipal securities. The recommended legislative changes identified in the report include:

- Eliminating the availability of exemptions for conduit borrowers who are not municipal entities.
- Authorizing the SEC to set baseline disclosure standards and require municipal issuers to have audited financial statements.
- Authorizing the SEC to establish the form and content of financial statements for municipal issuers who issue municipal securities, and to recognize the standards of a designated private-sector body as generally accepted for purposes of the Federal securities laws.
- Providing a safe harbor from private liability for forward-looking statements of repeat municipal issuers that satisfy certain conditions.

- Permitting the Internal Revenue Service to share information with the SEC that it obtains from returns, audits, and examinations related to municipal securities offerings, particularly in instances of suspected securities fraud.
- Providing a mechanism, through trustees or other entities, to enforce compliance with continuing disclosure agreements and other obligations of municipal issuers to protect municipal securities bondholders.

Recommendations for regulatory changes included, among others, issuing updated interpretive guidance regarding disclosure obligations for municipal securities issuers and others or amending Exchange Act Rule 15c2-12 to further improve municipal securities disclosures.

Some of the considerations for improvements to the market structure included, among others:

- Improving pre-trade price transparency through amendments to Regulation ATS to require alternative trading systems with material transaction or dollar volume in municipal securities to publicly disseminate best bid and offer prices;
- Improving post-trade price transparency through MSRB requirements to for municipal bond dealers to report “yield spread” information in the Real Time Transaction Reporting System; and,
- Buttrressing the existing dealer pricing obligations through SEC and MSRB initiatives to improve the understanding of retail investors regarding the various ways to buy and sell municipal securities.

For more information contact Douglas Henderson, Managing Director: douglashenderson@kpmg.com or Dan McIsaac, Director: dmcisaac@kpmg.com

Enforcement Actions

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

- The SEC charged an executive with insider trading for making trades based on confidential information regarding potential acquisitions to be made by his company.
- The CFTC issued an order filing and settling charges against a large futures commission merchant in the amount of \$700,000 for filing inaccurate large trader reports and failing to diligently supervise the handling and reporting of accounts.
- The CFTC obtained a court order requiring an individual to pay more than \$10 million in restitution and more than \$1.4 million in civil money penalties in connection with charges the individual operated a Ponzi scheme related to commodity futures. The individual also was subjected to permanent trading and registration bans.

For more information contact Douglas Henderson, Managing Director: douglashenderson@kpmg.com or Dan McIsaac, Director: dmcisaac@kpmg.com

Recent Supervisory Actions against Financial Institutions

Last Updated: August 6, 2012

Agency	Institution Type	Action	Date	Synopsis of Action
Federal Reserve Board	Bank Holding Company	Written Agreement	07/26	The Federal Reserve Board entered into a Written Agreement with a Florida-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	07/24	The Federal Reserve Board entered into a Written Agreement with a North Carolina-based bank holding company to address dividends and distributions, debt and stock redemptions, and capital to ensure that it serves as a source of strength for its state nonmember bank and nonbank subsidiaries.
Bureau of Consumer Financial Protection; Office of the Comptroller of the Currency	National Bank	Civil Money Penalty	06/18	<p>The Bureau of Consumer Financial Protection entered into a Consent Order with a national bank to address deficiencies related to marketing practices engaged in by the bank and its vendors and which the CFPB determined to be deceptive . The CFPB required \$140 million in restitution to be paid to approximately 2 million consumers and a civil money penalty of \$25 million.</p> <p>In a separate but related action, the Office of the Comptroller of the Currency entered into a Consent Cease and Desist Order with the bank. The OCC required \$150 million in restitution to be paid to approximately 2.5 million consumers and a civil money penalty of \$35 million.</p> <p>The CFPB’s restitution payments may be satisfied with the restitution payments required by the OCC.</p>
Federal Reserve Board	Bank Holding Company	Written Agreement	07/05	The Federal Reserve Board entered into a Written Agreement with an Indiana-based bank holding company to address dividends and distributions, debt and stock redemptions, capital and affiliate transactions to ensure that it serves as a source of strength for its national bank and Federal savings bank subsidiaries in addition to its various nonbank subsidiaries.
Federal Reserve Board	Bank Holding Company	Written Agreement	07/03	The Federal Reserve Board entered into a Written Agreement with a Maryland-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	06/28	The Federal Reserve Board entered into a Written Agreement with a Virginia-based bank holding company to address dividends and distributions, debt and stock redemptions, capital and affiliate transactions 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	06/26	The Federal Reserve Board entered into a Written Agreement with a Minnesota-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.

Contact Us

This is a publication of KPMG's Financial Services Regulatory Practice

Linda Gallagher, National Leader, Financial Services Regulatory Practice

Douglas Henderson, Managing Director, Broker-Dealer Regulatory

Hugh Kelly, Principal, Bank Regulatory

Amy Matsuo, Principal, Enterprise & Consumer Compliance

John Schneider, Principal, Investment Management Regulatory

David Sherwood, Director, Insurance Regulatory

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Asset Management, Trust, and Fiduciary

Bill Canellis T: 973.912.4817

Bank Regulatory Reporting

Francis Gomez T: 212.872.5662

Chris Monks T: 617.988.1718

Brett Wright T: 901.249.3809

Capital Markets Regulation

Lucia Baraybar T: 212.872.6477

Stefan Cooper T: 856.417.6799

Doug Henderson T: 212.872.6687

Dan Mclsaac T: 212.954.5973

Capital/Basel II and III

Philip Aquilino T: 703-286-8029

Bill Canellis T: 973.912.4817

Paul Cardon T: 617.988.1282

Hugh Kelly T: 202.533.5200

Greg Matthews T: 212.954.7784

Commodities and Futures Regulation

Dan Mclsaac T: 212.954.5973

Consumer & Enterprise Compliance

Linda Gallagher T: 703.286.8248

Kari Greathouse T: 636.587.2844

Amy Matsuo T: 919.380.1509

Cross-Border Regulation

Philip Aquilino T: 703-286-8029

Hugh Kelly T: 202.533.5200

Craig Stirnweis T: 214-840-6866

Foreign Banking Organizations

Philip Aquilino T: 703-286-8029

Francis Gomez T: 212.872.5662

Hugh Kelly T: 202.533.5200

Craig Stirnweis T: 214-840-6866

Insurance

David Sherwood T: 212.954.5861

Lisa Stimson T: 860.297.6059

Investment Management Regulation

John Schneider T: 617.988.1000

Privacy & Identity Theft

Linda Gallagher T: 703.286.8248

Kari Greathouse T: 636.587.2844

Safety & Soundness, Corporate Licensing & Governance, and ERM Regulation

Philip Aquilino T: 703-286-8029

Paul Cardon T: 617.988.1282

Hugh Kelly T: 202.533.5200

Greg Matthews T: 212.954.7784

Craig Stirnweis T: 214.840.6866

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