



## Weekly Newsletter

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# Bank & Thrift

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## Fed Releases Guidance for 2013 CCAR and CapPR Programs; Macroeconomic and Financial Scenarios Due Out November 15

The Federal Reserve Board ("Fed") launched the 2013 capital planning and stress testing program on November 9, 2012. The program includes the Comprehensive Capital Analysis and Review ("CCAR") of 19 firms as well as the Capital Plan Review ("CapPR") of an additional 11 bank holding companies with \$50 billion or more of total consolidated assets. Institutions in the CCAR and CapPR programs will be expected to have credible plans that show they have sufficient capital to continue to lend to households and businesses even under severely adverse conditions, and are well prepared to meet Basel III regulatory capital standards as they are implemented in the United States.

The November 9 release includes instructions with timelines for submissions as well as general guidelines. The Fed will release the associated macroeconomic and financial market scenarios on November 15, 2012. Institutions will be required to submit their capital plans no later than January 7, 2013.

Under the CCAR, firms' capital adequacy will be assessed against a number of quantitative and qualitative criteria, including projected performance under the stress scenarios provided by the Fed and the institutions' internal scenarios. Boards of directors of the institutions are required to review and approve capital plans before submitting them to the Fed.

In 2013, the Fed will release two sets of post-stress data for each firm. One set will reflect the capital distribution assumptions prescribed in the stress testing rule mandated by the *Dodd-Frank Wall Street Reform and Consumer Protection Act* to enhance comparability of results. The other will include ratios based on each firm's own planned capital actions as proposed in their initial CCAR capital plan submissions, as well as ratios based on any adjustments made to the planned capital distributions.

The Fed's assessment of capital plans under CapPR will be based solely on an assessment of the firms' own capital plans and internal capital planning and stress testing practices that support them. None of the bank-specific results for CapPR tests will be published in 2013.

## Agencies Issue Guidance Regarding Risk-Based Capital Rulemakings

The Federal Reserve Board, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation (collectively, the "Agencies") jointly released guidance on November 9, 2012 to announce that they do not expect any of their jointly proposed rules to revise and replace the current risk-based capital regulations to become effective in final form on January 1, 2013. The proposed rule would implement the Basel III capital framework in the United States and the Agencies note that, although they will miss the Basel Committee on Banking Supervision's scheduled implementation for Basel III, they take the timeframes seriously and are working "as expeditiously as possible to complete the rulemaking process".

The Agencies add they will take operational and other considerations into account when determining appropriate implementation dates and associated transition periods.

## FDIC Guidance Addresses End of Temporary Unlimited Deposit Insurance Coverage for Noninterest-Bearing Transaction Accounts

The Federal Deposit Insurance Corporation ("FDIC") released Financial Institution Letter 45-2012 on November 5, 2012 to remind insured depository institutions that the temporary unlimited deposit insurance coverage for noninterest-bearing transaction accounts is scheduled to expire on December 31, 2012. Beginning January 1, 2013, the FDIC will no longer provide separate, unlimited deposit insurance for these accounts.

Institutions are encouraged to ensure that their depositors receive adequate advance notice of the insurance coverage change by:

- Providing advance notice in writing;
- Removing any notices of the temporary coverage in their offices, branches and Web sites; and
- Modifying related account agreements and disclosure statements as necessary.

## International Standards Setting Bodies Conduct Conference on Financial Inclusion

The Financial Stability Institute ("FSI") of the Bank for International Settlements ("BIS") recently announced that it had hosted the first annual Global Partnership for Financial Inclusion ("GPFI") Conference on Standard-Setting Bodies and Financial Inclusion. Under the theme "*Promoting financial inclusion through proportionate standards and guidance*", participants discussed the challenges faced and overcome by standard-setting bodies in their efforts to broaden financial inclusion.

FSI stated that participants in the conference included senior policymakers, regulators and supervisors from both G20 and non-G20 countries as well as representatives from five global standard-setting bodies: the Basel Committee on Banking Supervision ("BCBS"), the Financial Action Task Force ("FATF"), the Committee on Payment and Settlement Systems ("CPSS"), the International Association of Deposit Insurers ("IADI") and the International Association of Insurance Supervisors ("IAIS"). The G20 Leaders have called upon standard-setting bodies to step up their work in this area in a manner consistent with their core mandates.

The FSI also states that the proportionality principle - the balancing of risks and benefits against the costs of regulation and supervision - was emphasized throughout the conference as essential component both in developing global standards and guidance relevant to financial inclusion and in implementing policies at country level.

## Fed Governor Speaks to Community Bankers about Mortgage Lending

Federal Reserve Board ("Fed") Governor Elizabeth Duke spoke on November 9, 2012 before the Community Bankers Symposium, which was sponsored by the Fed, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation. Her remarks focused on the effects of regulation on community banks with particular attention to residential mortgage lending. She expressed concern that the regulatory environment could be

approaching a point with regard to residential mortgage lending where regulatory complexity was resulting in unintentional barriers to offering the service.

Fed Governor Duke offered the following observations:

- *Home Mortgage Disclosure Act* (“HMDA”) data indicate that community banks and credit unions accounted for approximately 25 percent of residential mortgage loan originations in 2011.
- HMDA data further show that “a larger share of conventional loans extended by smaller lenders carry higher prices.”
- Mortgage lending appears to be just as important to community banks as it is to larger banks, as both tend to devote about one-quarter of their on-balance-sheet loan portfolios to home loans.
- Call Report data suggest that only a small fraction of community banks engage in the origination of mortgages for sale, securitization, or mortgage servicing though the number of participating community banks is increasing. “The recent entry of new banks into the market indicates that barriers to entry are not prohibitive. So it seems to me that appropriate policy should encourage community banks to expand their mortgage lending rather than discourage them from doing so.”
- The definitions of qualified mortgages and qualified residential mortgages could have a profound effect on the mortgage terms offered and the underwriting conditions for all banks. These definitions may constrain community bankers from using their experience with the cash flows from a small business customer or their knowledge of local real estate markets to customize a loan for an “irregular” situation.
- “I am convinced that the best course for policymakers would be to abandon efforts for a one-size-fits-all approach to mortgage lending... I think an argument can be made that it is appropriate to establish a separate, simpler regulatory structure to cover such lending [mortgage lending].”

## Capital Markets & Investment Management

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### FSB Publishes Progress Report for Implementation of OTC Derivative Market Reforms

The Financial Stability Board (“FSB”) recently published a fourth progress report on the implementation of over-the-counter (“OTC”) derivative market reforms. The FSB indicates the report takes stock of the readiness of market infrastructure across the FSB’s member countries to provide clearing services, collect and disseminate trade data and provide organized trading platforms for OTC derivatives. It also reviews the progress made by standard-setting bodies and national and regional authorities towards meeting the commitments made by G20 Leaders that, by year-end 2012: a) all standardized OTC derivative contracts be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties (“CCPs”); b) OTC derivative contracts be reported to trade repositories; and c) non-centrally cleared contracts be subject to higher capital requirements.

Highlights of the report include:

- Market infrastructure is in place and can be scaled up. Expansion of infrastructure use has plateaued because of uncertainties over the future regulatory framework.
- The international policy work on the safeguards for global clearing is substantially complete and implementation is proceeding at a national level.
- Regulatory uncertainty remains the most significant impediment to further progress and to comprehensive use of market infrastructure. Jurisdictions should put in place their legislation and regulation promptly and in a form flexible enough to respond to cross-border consistency and other related issues. Regulators should act by year-end 2012 to identify conflicts, inconsistencies and gaps in their respective national frameworks, including in the cross-border application of rules.

Since the third progress report (June 2012):

- Progress has been made in developing international policies, including through the publication of interim rules on capital requirements for bank exposures to CCPs and consultative documents addressing margining requirements for non-centrally cleared derivatives and recovery and resolution of financial market infrastructures. Standard-setters are working on guidance for trade repositories and authorities aimed at facilitating minimum access for authorities to trade repository data needed to support their mandates and responsibilities.
- Significant progress has been made in the design of a global legal entity identifier system, which is expected to launch by March 2013.
- G20 Leaders have called on jurisdictions to rapidly finalize their decision-making and put in place the legislation and regulations needed to meet the year-end 2012 commitment to central clearing.
- Significant steps towards further implementation have been taken, notably by the European Union, Hong Kong, Japan and the United States.
- Progress, both bilaterally and multilaterally, to identify and address cross-border issues has been slow. In a number of jurisdictions the approach to cross-border application has yet to be specified.

The FSB encourages public feedback on this report and requests comments be submitted by November 30, 2012.

## Enforcement Actions

During the week of November 5, 2012, the Securities and Exchange Commission (“SEC”) and the Commodity Futures Trading Commission (“CFTC”) announced the following enforcement actions:

- The SEC charged an investment adviser and his firm for defrauding clients by providing misleading information about trading losses and misappropriating client funds to personal use. The adviser and his firm agreed to pay \$2.3 million as restitution and forfeiture charges as part of a final judgment. The adviser also consented to a bar from the securities industry and the penny stock industry.
- The SEC charged a hedge fund manager with defrauding investors by concealing losses. The investigation is ongoing.
- The SEC charged three executives of a public company with misrepresenting the financial condition of their firm and making multiple SEC filings and public statements that contained material misrepresentations. The SEC also charged the firm’s independent auditor with facilitating the scheme, by issuing clean audit opinions based on “reckless

and deficient audit work". The SEC's complaint seeks final judgment ordering the payment of financial penalties, disgorgement of ill-gotten gains, and bars for certain of the defendants from serving as officers or directors of public companies or participating in penny stock offerings.

- The CFTC filed an enforcement action against a trader at a futures commission merchant ("FCM") for intentionally concealing the size and risk associated with positions taken in a firm account traded by the employee. The trader's concealment resulted in realized losses to the FCM of approximately \$118,440,000 after the FCM's offset and liquidation of the position. In its continuing litigation, the CFTC seeks civil monetary penalties, trading and registration bans, and a permanent injunction prohibiting further violations of the Federal commodities laws.

## Recent Supervisory Actions against Financial Institutions

Last Updated: November 12, 2012

Agency	Institution Type	Action	Date	Synopsis of Action
Federal Reserve Board	Bank Holding Company	Written Agreement	11/08	The Federal Reserve Board entered into a Written Agreement with an Illinois-based bank holding company to address dividends and distributions and debt and stock redemptions to ensure it serves as a source of strength for its state nonmember bank subsidiary.
Federal Reserve Board	Bank Holding Company	Written Agreement	11/01	The Federal Reserve Board entered into a Written Agreement with a Georgia-based bank holding company to address dividends and distributions and debt and stock redemptions to ensure it serves as a source of strength for its state nonmember bank and nonbank subsidiaries.
Federal Reserve Board	Bank Holding Company, State Member Bank	Written Agreement	10/23	The Federal Reserve Board entered into a Written Agreement with a Maryland-based bank holding company and its state member bank subsidiary to address deficiencies associated with board oversight, credit risk management, asset improvement, allowance for loan and lease losses, capital, dividends and distributions and debt and stock redemptions.
Four Federal Agencies	Bank Holding Company; State Nonmember Bank	Civil Money Penalty	10/01	<p>The Bureau of Consumer Financial Protection and the Federal Deposit Insurance Corporation entered into a Joint Consent Order for Restitution and Order to Pay Civil Money Penalty with a Utah-based state nonmember bank to address deficiencies related to credit card marketing practices engaged in by the bank which the agencies found to be misleading and deceptive. In a related action, the Office of the Comptroller of the Currency entered into a Cease and Desist Order and an Order to Pay a Civil Money Penalty with a Federal savings bank affiliate of the bank. The OCC's action was directed at the savings bank's vendor management. The Federal Reserve Board also separately took enforcement action against two related bank holding companies in coordination with the other agencies' actions.</p> <p>Together, the enforcement actions result in the entities paying restitution of approximately \$85 million to more than 250,000 customers, as well as civil money penalties of approximately \$27 million.</p>
Federal Reserve Board	Bank Holding Company	Written Agreement	10/02	The Federal Reserve Board entered into a Written Agreement with an Alabama-based bank holding company to address dividends and debt and stock redemptions and capital to ensure it serves as a source of strength for its national savings association subsidiary.
Federal Reserve Board	Bank Holding Company	Written Agreement	09/25	The Federal Reserve Board entered into a Written Agreement with a Minnesota-based bank holding company to address dividends, distributions and other payments, debt and stock redemptions and capital to ensure it serves as a source of strength for its state nonmember bank and nonbank subsidiaries.

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