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Bank & Thrift

Federal Reserve and FDIC Release Optional Model Template to Assist Eligible Firms to Prepare Tailored Resolution Plans

The Federal Reserve Board (Federal Reserve) and the Federal Deposit Insurance Corporation (FDIC) released an optional model template for a tailored resolution plan that may be used by firms eligible to submit a tailored resolution plan on or before December 31, 2013.

Section 165(d) of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* requires bank holding companies with total consolidated assets of \$50 billion or more and nonbank financial companies designated for enhanced prudential supervision by the Financial Stability Oversight Council to submit resolution plans to the Federal Reserve and the FDIC. The initial resolution plans for one group of firms, generally those with less than \$100 billion in total nonbank assets or \$100 billion in U.S. nonbank assets if they are a foreign-based company, must be submitted to the Federal Reserve and the FDIC on or before December 31.

The agencies' joint final rule governing resolution plans, which was issued in January 2013, permits eligible firms, generally those that are smaller and less complex, to file a tailored resolution plan. The tailored resolution plan focuses on the nonbanking operations of the firm and on the interconnections and interdependencies between the nonbanking and banking operations. The optional template is intended to facilitate the preparation of these plans.

Basel Committee Updates G20 on Implementation of Basel III

The Bank for International Settlements' Basel Committee on Banking Supervision (Basel Committee) released a report to the G20 Leaders on the Implementation of Basel III regulatory reforms. The report updates the Basel Committee's previous report issued in April 2013 and finds that 25 of the 27 jurisdictions comprising the Basel Committee have now issued final capital regulations. In addition, a "number of members" have begun to move towards introducing regulations for the liquidity and leverage ratios, as well as the requirements that apply to firms designated as global systemically important banks (G-SIBs) and domestic systemically important banks (D-SIBs).

Based on its periodic monitoring of the quantitative impact of Basel III, the Basel Committee indicates that internationally active banks continue to build capital and appear "well placed to meet the full set of fully phased-in minimum Basel III capital requirements ahead of the 2019 deadline." The aggregated capital shortfall of those banks that still have capital ratios below the fully phased-in 2019 Common Equity Tier 1 capital ratio requirements "continues to decrease."

The Basel Committee separately notes that it has published studies of banks' calculations of risk-weighted assets in both the banking and trading books. The results revealed material variations in the measurement of risk-weighted assets across banks, even for identical hypothetical test portfolios. The Basel Committee is now actively considering possible policy reforms to improve the comparability of outcomes.

Enterprise & Consumer Compliance

CFPB Bulletin Outlines Responsibilities of Data Furnishers under FCRA

The Bureau of Consumer Financial Protection (CFPB or Bureau) released Bulletin 2013-09 on September 4, 2013 to specifically alert companies that supply information (Furnishers) to consumer reporting agencies (CRAs) to their obligations under the *Fair Credit Reporting Act* (FCRA) to “review all relevant information” they receive in connection with disputes forwarded by CRAs. The CFPB will evaluate Furnishers’ compliance with the requirement to review “all relevant information” subject to its supervisory and enforcement authorities.

As outlined in Bulletin 2013-09, with respect to disputes received by Furnishers from CRAs, the CFPB generally expects each Furnisher to:

- Maintain a system “reasonably capable” of receiving from CRAs information regarding disputes, including supporting documentation;
- Conduct an investigation of the disputed information including reviewing:
 - “All relevant information” forwarded by the CRA and;
 - The Furnisher’s own information with respect to the dispute;
- Report the results of the investigation to the CRA that sent the dispute;
- Provide corrected information to every nationwide CRA that received the information if the information is inaccurate or incomplete; and
- Modify or delete the disputed information, or permanently block the reporting of the information if the information is incomplete or inaccurate, or cannot be verified.

The Bureau states that it is monitoring consumer complaints and will prioritize examinations and other supervisory actions on the basis of risks to consumers.

Capital Markets & Investment Management

International Group Publishes Report on the Long-Term Macroeconomic Effects of OTC Derivatives Regulatory Reforms

The Macroeconomic Assessment Group on Derivatives (MAGD) published a report on the macroeconomic effects of over-the-counter (OTC) derivatives regulatory reforms on August 26, 2013. This report presents the MAGD’s findings “in the long run,” assuming the reforms have been fully implemented and their full economic effects realized. Across national estimates, the

results suggest that the regulatory reforms are likely to have a small positive net macroeconomic impact.

The MAGD summarizes that the report focuses on the effects of: 1) mandatory central clearing of standardized OTC derivatives; 2) margin requirements for non-centrally cleared OTC derivatives, and 3) bank capital requirements for derivatives-related exposures. Projected results indicate the net economic benefits from regulatory reforms approximate 0.12 percent of GDP per year, representing economic benefits of 0.16 percent of GDP per year from avoiding financial crises and economic costs of 0.04 percent of GDP per year from institutions passing on the expense of holding more capital and collateral to the broader economy.

The MAGD was set up by the OTC Derivatives Coordination Group (ODCG), comprised of the Chairs of the Basel Committee on Banking Supervision (Basel Committee), the Committee on the Global Financial System (CGFS), the Committee on Payment and Settlement Systems (CPSS), the Financial Stability Board (FSB) and the International Organization of Securities Commissions (IOSCO). It comprises financial and economic modeling experts from 29 central banks and other authorities.

Basel Committee and IOSCO Finalize Margin Framework for Non-Centrally Cleared Derivatives

The Basel Committee on Banking Supervision and the International Organization of Securities Commissions (IOSCO) released the final framework for margin requirements for non-centrally cleared derivatives on September 2, 2013. The framework responds to a 2011 agreement reached by the G20 to develop consistent global standards for margin requirements on non-centrally cleared derivatives. It incorporates responses to two consultative documents as well as the results of a quantitative impact study.

Under the framework, all financial firms and systemically important non-financial entities (Covered Entities) that engage in non-centrally cleared derivatives will be required to exchange initial and variation margin commensurate with the counterparty risks arising from such transactions. The requirements are intended to reduce systemic risks related to over-the-counter (OTC) derivatives markets, as well as to provide firms with appropriate incentives for central clearing while managing the overall liquidity impact of the requirements. Eight key principles and requirements are detailed, including:

- Appropriate margining practices should be in place with respect to all derivatives transactions that are not cleared by central counterparties (CCPs).
- All Covered Entities that engage in non-centrally cleared derivatives must exchange initial and variation margin as appropriate to the counterparty risks posed by such transactions.
- The methodologies for calculating initial and variation margin that serve as the baseline for margin collected from a counterparty should:
 - Be consistent across entities covered by the requirements and reflect the potential future exposure (initial margin) and current exposure (variation margin) associated with the portfolio of non-centrally cleared derivatives in question and
 - Ensure that all counterparty risk exposures are fully covered with a high degree of confidence.
- Assets collected as collateral for initial and variation margin purposes should be highly liquid and should, after accounting for an appropriate haircut, be able to hold their value in a time of financial stress.
- Initial margin should be exchanged by both parties, without netting of amounts collected by each party, and held in such a way as to ensure the:

- Margin collected is immediately available to the collecting party in the event of the counterparty's default; and
- Collected margin must be subject to arrangements that fully protect the posting party to the extent possible under applicable law in the event that the collecting party enters bankruptcy.
- Transactions between a firm and its affiliates should be subject to appropriate regulation in a manner consistent with each jurisdiction's legal and regulatory framework.
- Regulatory regimes should interact so as to result in sufficiently consistent and non-duplicative regulatory margin requirements for non-centrally cleared derivatives across jurisdictions.
- Margin requirements should be phased in over an appropriate period of time. Regulators should undertake a coordinated review of the margin standards once the requirements are in place and functioning to assess the overall efficacy of the standards and to ensure harmonization across national jurisdictions as well as across related regulatory initiatives.

CFTC Issues Concept Release on Risk Controls and System Safeguards for Automated Trading Environments

On September 9, 2013, the Commodity Futures Trading Commission (CFTC) issued a Concept Release on *Risk Controls and System Safeguards for Automated Trading Environments*. The Concept Release provides an overview of the automated trading environment, including its principal actors, potential risks, and responsive measures taken to date by the Commission or industry participants. The Concept Release also discusses a series of (1) pre-trade risk controls; (2) post trade reports and other measures; (3) system safeguards related to the design, testing and supervision of automated trading systems (ATSSs); and (4) additional protections designed to promote safe and orderly markets. In each case, the CFTC seeks public comment regarding these measures. Comments are requested for a period of 90 days following publication in the *Federal Register*.

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 former executive of a firm with violating Regulation FD, which requires material nonpublic information to be disclosed publicly in a broad manner. The executive is accused of alerting certain analysts and investors about an upcoming major development in advance of a press release. The individual agreed to settle the charges without admitting or denying the SEC's findings, by paying a \$50,000 penalty.
- The SEC announced that a foreign trader whose U.S. brokerage account was frozen in an SEC emergency action in June 2013 has agreed to pay \$5.2 million to settle charges that he traded on inside information in advance of a public announcement about a proposed acquisition of a U.S. company by a foreign firm.
- The SEC charged a purported money manager with conducting a free-riding scheme to defraud three brokerage firms of nearly \$2 million. The investigation is ongoing.
- The CFTC issued an Order filing and simultaneously settling charges against registered Futures Commission Merchant (FCM), for failing to maintain adequate funds in secured accounts, in violation of CFTC Regulation 30.7. The Order required the FCM to pay a \$150,000 civil monetary penalty.

- The CFTC issued an Order filing and simultaneously settling charges against an individual and his company for engaging in illegal, off-exchange precious metals transactions. The Order requires the defendants to pay \$121,665.75 in restitution to their customers and imposes permanent registration and trading bans.
- In a second action, the CFTC issued an Order filing and simultaneously settling charges against an individual and his company for engaging in illegal, off-exchange precious metals transactions. The Orders requires the defendants to pay \$202,577 in restitution to their customers and imposes permanent registration and trading bans.

Recent Supervisory Actions against Financial Institutions

Last Updated: September 10, 2013

Agency	Institution Type	Action	Date	Synopsis of Action
Federal Reserve Board	Banking Holding Company	Written Agreement	09/05	The Federal Reserve Board entered into a Written Agreement with an Oklahoma-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 various nonbank subsidiaries.
Consumer Financial Protection Bureau	Debt Relief Services	Complaint for Permanent Injunction	08/20	The Bureau of Consumer Financial Protection filed a complaint in Federal district court seeking an injunction for permanent relief from a debt-relief services company for deceptive marketing practices in violation of the Telemarketing Sales Rule and deceptive acts or practices under the Dodd-Frank Wall Street Reform and Consumer Protection Act. t
Federal Reserve Board	Banking Holding Company	Written Agreement	08/08	The Federal Reserve Board entered into a Written Agreement with a Texas-based bank holding company to address dividends, debt and stock redemptions, and books and records to ensure that it serves as a source of strength for its state nonmember bank subsidiary.
Federal Reserve Board	State Member Bank	Civil Money Penalty	08/01	The Federal Reserve Board imposed an Order of Assessment of Civil Money Penalty against an Iowa-based state member bank to address violations of the National Flood Insurance Act.
Federal Reserve Board	State Member Bank	Civil Money Penalty	07/18	The Federal Reserve Board imposed an Order of Assessment of Civil Money Penalty against an Ohio-based state member bank to address violations of the National Flood Insurance Act.
Federal Reserve Board	Bank Holding Company; State Member Bank	Written Agreement	06/11	The Federal Reserve Board entered into a Written Agreement with a bank holding company to address deficiencies related to Bank Secrecy Act and anti-money laundering compliance, customer due diligence, suspicious activity monitoring and reporting, and transaction review.
Federal Reserve Board	Savings and Loan Holding Company	Written Agreement	06/11	The Federal Reserve Board entered into a Written Agreement with a savings and loan holding company to address deficiencies related to board oversight, risk management, internal controls, regulatory reporting, dividends and distributions, debt and stock redemptions, and affiliate transactions to ensure that it serves as a source of strength for its state chartered savings banks and various other nonbank subsidiaries.
Federal Reserve Board	Foreign Bank; Federal Branch	Written Agreement	05/17	The Federal Reserve Board entered into a Written Agreement with a foreign bank and one of its U.S. federal branches to address deficiencies related to board oversight, Bank Secrecy Act/Anti-Money Laundering Compliance, suspicious activity reporting, and customer due diligence.
Federal Reserve Board	Banking Holding Company	Written Agreement	05/02	The Federal Reserve Board entered into a Written Agreement with a Wisconsin-based bank holding company to address dividends, debt and stock redemptions, and capital to ensure that it serves as a source of strength for its national bank subsidiary.

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