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Federal Reserve and FDIC Release Public Sections of Recently Submitted Resolution Plans

On October 3, 2013, the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board (Federal Reserve) released the public sections of the annual resolution plans filed by 11 firms on October 1, 2013.

Bank holding companies with total consolidated assets of $50 billion or more and nonbank financial companies designated by the Financial Stability Oversight Council are required by the *Dodd-Frank Wall Street Reform and Consumer Protection Act* to submit resolution plans to the FDIC and Federal Reserve. The resolution plans, which contain public and confidential sections, must describe the company's strategy for rapid and orderly resolution in the event of material financial distress or failure of the company.

Firms that filed their initial resolution plans in 2012, generally those with U.S. nonbank assets greater than $250 billion,-were required to submit revised resolution plans by October 1, 2013. The agencies also required the 2013 plans to contain information concerning certain obstacles to resolvability under bankruptcy, such as funding and liquidity, global cooperation, counterparty actions, multiple competing insolvencies, and operations and interconnectedness.

A second group of firms, generally those with between $100 and $250 billion in total U.S. nonbank assets, submitted their initial resolution plans on July 1, 2013. A third group, generally those entities subject to the rule with less than $100 billion in total U.S. nonbank assets, must submit their initial resolution plans by December 31, 2013.

FDIC Chairman Outlines Progress on SIFI Resolution

Martin Gruenberg, Chairman of the Federal Deposit Insurance Corporation (FDIC), spoke before the Volcker Alliance Program on October 13, 2013, on the topic of the FDIC's strategy to resolve large, systemically important financial institutions (SIFIs) under the provisions of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act). In general, he said that the financial crisis of 2008 highlighted the mistaken assumption that SIFIs had a low risk of failures because their diversity and global reach would provide them with access to large amounts of equity or debt during financial stresses (as this did not happen). The crisis similarly highlighted that major countries in the world were unprepared for the close cross-border communication and cooperation between and among home- and host-country regulators that is needed to address the challenges of a failing SIFI with global operations.

Chairman Gruenberg outlined for the audience the requirements of Title I of the Dodd-Frank Act, which imposes a new requirement for certain financial institutions to prepare credible resolution plans, often referred to as "living wills" to demonstrate that they could be resolved under the U.S. Bankruptcy Code. He following with a discussion of Title II of the Dodd-Frank Act, which provides the FDIC broad new back-up authorities to place any SIFI into an FDIC receivership process if no viable private-sector alternative is available to prevent the default of the financial company and if a resolution through the bankruptcy process would have serious adverse effects on U.S. financial stability. He said that the FDIC has developed a resolution plan for SIFIs that he believed to be "a viable strategy, the Single Point of Entry (SPOE), under which the FDIC would take control of the parent holding company, allowing the firm's operating subsidiaries, domestic and foreign, to remain open and operating, diminishing contagion effects while removing culpable management and imposing losses on shareholders and unsecured creditors with no cost to the taxpayer." The FDIC plans to release a "fuller description" of this resolution process for public comment later in 2013.

From an international perspective, he stated the FDIC has developed strong cross-border relationships with the U.K. and is developing relationships with Switzerland and Germany. Chairman Gruenberg indicated that each of these countries agrees with the U.S. that the single point of entry strategy is the most viable approach to the resolution of their SIFIs. Additional relationships are being developed with Japan and China.

FDIC Guidance Addresses Interest Rate Risk Management

The Federal Deposit Insurance Corporation (FDIC) released Financial Institution Letter 46-2013 on October 8, 2013 to emphasize, in anticipation of a possible rising interest rate environment, the importance of FDIC-supervised institutions developing and employing an interest rate risk management program. In particular, the FDIC is concerned that certain institutions may not be sufficiently prepared or positioned for sustained increases in, or volatility of, interest rates. The guidance notes that a marked increase in interest rates could:

- Adversely affect net interest income and earnings performance for institutions with significantly liability-sensitive balance sheet positions; and
- Depreciate bond holdings in long duration issues to a degree that would be material relative to capital.

The FDIC is re-emphasizing practices to ensure State nonmember institutions have adopted a comprehensive asset-liability and interest rate risk management process that includes:

- Board and management oversight;
- Policy framework and exposure limits;
- Measuring and monitoring of interest rate risk; and
- Risk mitigation strategies.

Agencies Issue Results of Shared National Credit Review

The Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation jointly released the 2013 Shared National Credit Review on October 10, 2013. The results of the review are based on analyses prepared in the second quarter of 2013 using credit-related data provided by Federally supervised institutions as of December 31, 2012, and March 31, 2013.

In general, the Shared National Credit (SNC) Review found that:

- Total SNC commitments increased 8 percent over the 2012 review; total SNC loans outstanding increased 10 percent.
- The quality of large loan commitments owned by U.S. banking organizations, foreign banking organizations (FBOs), and nonbanks was relatively unchanged in 2013 from the prior year.

- The volume of criticized assets remained elevated at $302 billion, or 10 percent of total commitments. Leveraged loans accounted for $227 billion, or 75 percent, of criticized SNC assets.
- Classified assets, which are rated as substandard, doubtful, and loss, represented 6 percent of the SNC portfolio, compared with 7 percent in 2012.
- Credits rated special mention increased slightly to approximately 4 percent of the portfolio.
- Nonaccrual loans, adjusted for losses, declined 26 percent.
- The distribution of credits across entities, (U.S. banking organizations, FBOs, and nonbanks) remained relatively unchanged. U.S. banking organizations owned 44 percent of total SNC loan commitments, FBOs owned 36 percent, and nonbanks owned 20 percent.
- Nonbanks continued to own a larger share of classified (67 percent) and nonaccrual (72 percent) assets than their total share of the SNC portfolio. Institutions insured by the FDIC owned 12 percent of classified assets and 7 percent of nonaccrual loans.

OCC Issues Updated Bank Accounting Advisory Series

The Office of the Comptroller of the Currency (OCC) released an update to the Bank Accounting Advisory Series on October 10, 2013. The update includes recent answers to frequently asked questions from the industry and examiners covering areas such as acquired loans, other real estate owned, transfers of servicing, and fair value accounting.

The OCC notes that the Bank Accounting Advisory Series does not represent official rules or regulations of the OCC but rather the interpretations of generally accepted accounting principles and regulatory guidance of the OCC's Office of the Chief Accountant based on the facts and circumstances presented. National banks and Federal savings associations that deviate from these stated interpretations may be required to justify those departures to the OCC.

Enterprise & Consumer Compliance

Bureau is Seeking Participants for Innovations Project

In an October 4, 2013 blog post, the Bureau of Consumer Financial Protection (CFPB or Bureau) announced that it is seeking "educational organizations, businesses, and other innovators" to work with the Bureau on its "Innovations Project" that will research and test approaches to help consumers with financial decision-making challenges. Participating organizations would assist with developing, creating prototypes, and testing "innovations" in the areas of: organizing and managing finances; managing cash flow and bill payments; and managing finances at retirement. Details for participant criteria are provided on the CFPB Web site. Applications are requested by November 8, 2013.

CFPB Seeking Participants to Test Disclosures

The Bureau of Consumer Financial Protection (CFPB) announced in an October 3, 2013 blog post that it has finalized a new trial disclosure policy as part of its "Project Catalyst" that allows companies to apply for a waiver to test potential disclosure improvements on a trial basis. The disclosure tests are intended to provide the Bureau with data about what information and which delivery mechanisms help consumers best understand financial products and services and will serve to inform improvements to disclosure rules. Entities interested in participating in the testing process are encouraged to contact the CFPB.

CFPB Announces Enforcement Actions Against a Debt Settlement Payment Processor and Two HMDA Reporting Entities (Bank and Nonbank); Issues Bulletin on HMDA Reporting

The Bureau of Consumer Financial Protection (CFPB or Bureau) charged a debt-settlement payment processor with allegedly violating the *Telemarketing Sales Rule* by helping debt settlement companies to charge consumer fees for their debt settlement services in advance of settling the consumer's debt. The CFPB is seeking civil money penalties of $1.376 million as well as bars against providing account maintenance or payment processing services to any debt relief or mortgage assistance relief services.

In separate and unrelated actions, the Bureau announced the release of two Consent Orders against a nonbank and a bank to address violations of the *Home Mortgage Disclosure Act* (HMDA) that resulted in the collection and reporting of inaccurate information. The nonbank is required to pay $425,000 in civil money penalties, and the bank will pay $34,000 in civil money penalties.

The CFPB also announced the release of Bulletin 2013-11, which addresses HMDA reporting and outlines:

- Elements of an effective compliance management system for HMDA reporting.
- Factors the Bureau may consider when evaluating an enforcement action (including, among others, the size of the bank or nonbank's mortgage lending activity; the error rate; the history of previous HMDA supervisory activity, including the history of any violations; and whether the institution self-identified or self-corrected any errors).
- A new Resubmission Schedule and Guidelines that will apply to HMDA reviews beginning January 18, 2014 or thereafter. The Guidelines include error thresholds to be used by CFPB examiners that will determine when institutions should correct and resubmit their data. Banks and nonbanks that have 100,000 or more mortgage loans to report should correct and resubmit HMDA data when at least four percent or more of a sample of entries from the HMDA LAR contains errors. Banks and nonbanks with fewer than 100,000 entries will be subject to a ten percent error threshold.

Agencies Propose Amendments to Flood Insurance Regulations

On October 11, 2013, five Federal regulatory agencies issued a joint notice of proposed rulemaking to amend regulations pertaining to loans secured by property located in special flood hazard areas. The proposed rule would implement certain provisions of the *Biggert-Waters Flood Insurance Reform Act of 2012* (Biggert-Waters) with respect to private flood insurance, the escrow of flood insurance payments, and the forced-placement of flood insurance as follows:

Private flood insurance.

- Banks would be required to accept "private flood insurance" as defined in Biggert-Waters though a safe harbor would be provided under which a flood insurance policy would be deemed to meet the definition of "private flood insurance" if a State insurance regulator makes a determination in writing that the policy meets this definition.
- The agencies are considering adding a provision expressly permitting the discretionary acceptance of private policies that do not meet the statutory definition of "private flood insurance" if the policies meet certain standards and requirements.

Escrows of flood insurance payments.

- Banks, or servicers acting on their behalf, would be required to escrow premiums and fees for flood insurance for residential improved real estate or a mobile home securing any residential mortgage loan outstanding or entered into on or after July 6, 2014. For loans that are outstanding on July 6, 2014, banks would be required to begin escrowing with the first loan payment after the first renewal date of the borrower's flood insurance policy on or after July 6, 2014.
- Banks would be required to mail or deliver a written notice informing borrowers of the escrow requirement.
- An exception would be provided for a bank that has total assets of less than $1 billion and, as of July 6, 2012, was not required by Federal or State law to escrow taxes or insurance for the term of the loan and did not have a policy to require escrow of taxes and insurance.

Force-placed insurance.

- A bank or its servicer would have the authority to charge a borrower for the cost of flood insurance coverage commencing on the date on which such coverage lapsed or on which the coverage became insufficient.
- The proposed rule would also: stipulate the circumstances under which a lender or its servicer must terminate force-placed flood insurance coverage and refund payments to a borrower; and set forth the documentary evidence a lender must accept to confirm that a borrower has obtained an appropriate amount of flood insurance coverage.

The proposed rule is being issued by the Federal Reserve Board, the Farm Credit Administration, the Federal Deposit Insurance Corporation, the National Credit Union Administration and the Office of the Comptroller of the Currency. Comments are generally requested by December 10, 2013.

Bureau Releases Report on Impact of CARD Act

The Bureau of Consumer Financial Protection (CFPB or Bureau) released a report on impact of the *Credit Card Accountability Responsibility and Disclosure Act of 2009* (CARD Act) on October 1, 2013. Based on its analysis, the CFPB reports the following findings:

- The CARD Act has significantly increased the transparency of the credit card marketplace for consumers.
- "Overlimit fees and repricing actions have been largely eliminated."
- The total cost of credit, defined by the CFPB as the annualized sum of all amounts paid by consumers (including both interest charges and fees) divided by the average of outstanding balances, declined by nearly two basis points – though it cannot say how much is directly attributable to the CARD Act.
- Evidence suggests that the CARD Act had a discernible impact on credit availability in

three discrete respects:

  - There has been a substantial decrease in the number of credit card accounts originated among students and other consumers under the age of 21.
  - The issuers contacted in preparing this report stated that a small but discernible percentage of applicants that they deemed otherwise creditworthy are being declined as a result of insufficient income to satisfy the CARD Act's ability-to-pay requirement.
  - There has been a marked decline in the percentage of consumers receiving unsolicited credit line increases (also referred to as "proactive line increases") on their accounts.

- Remaining areas of possible concern include:
  - Marketing of "add-on" products.
  - Application of fees at account opening.
  - Deferred interest products.
  - Online disclosures.
  - Rewards products.
  - Grace periods.

Capital Markets & Investment Management

OFR Delivers Report on Asset Management Industry to Financial Stability Oversight Council; SEC Seeks Comment on the Report

The Department of the Treasury's Office of Financial Research (OFR) delivered a report, *Asset Management and Financial Stability*, to the Financial Stability Oversight Council (Council) on September 30, 2013. The report, which was prepared at the request of the Council, addresses ways that industry activities in the asset management industry could create, amplify, or transmit stress in the financial system.

The report states that the Council "decided to study the activities of asset management firms to better inform its analysis of whether—and how—to consider such firms for enhanced prudential standards and supervision under Section 113" of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. The OFR notes that the report finds that significant gaps in data about the asset management industry limit the ability to evaluate potential threats and their implications for financial stability.

Separately, the Securities and Exchange Commission (SEC) established a Web page for the public to use to provide comment on the OFR report. Comments are requested through November 1, 2013.

SEC Pays Largest Whistleblower Award

On October 1, 2013, the Securities and Exchange Commission (SEC) announced an award of more than $14 million to a whistleblower whose information led to an SEC enforcement action that recovered substantial investor funds. The award is the largest made by the SEC's whistleblower program to date.

The SEC's Office of the Whistleblower was established in 2011 as authorized by the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. The whistleblower program rewards high-quality original information that results in an SEC enforcement action with sanctions exceeding $1 million, and awards can range from 10 percent to 30 percent of the money collected in a case.

FINRA Releases Regulatory Notice on Suitability

The Financial Industry Regulatory Authority (FINRA) recently released Regulatory Notice 13-31, dated September 2013, to outline highlights from FINRA examination approaches, common findings, and effective practices for complying with its Suitability Rule. The Notice does not create new or amended guidance but rather is intended to help entities build a strong compliance environment.

Recent Supervisory Actions against Financial Institutions

Last Updated: October 14, 2013

Agency	Institution Type	Action	Date	Synopsis of Action
Federal Reserve Board	Banking Holding Company	Written Agreement	09/26	The Federal Reserve Board entered into a Written Agreement with an Alabama-based bank holding company to address dividends and distributions, debt and stock redemptions, and new directors to ensure that it serves as a source of strength for its state nonmember bank and nonbank subsidiaries.
Multiple Agencies	Bank Holding Company, National Bank,	Consent Orders, Civil Money Penalty, Cease and Desist Orders	09/18	The Federal Reserve Board imposed an Order of Assessment of Civil Money Penalty against a New York-based bank holding company (BHC) to address deficiencies in the BHC's oversight, management controls over its Chief Investment Office. The Office of the Comptroller of the Currency (OCC) entered into a Consent Order of Assessment of Civil Money Penalty with a National Bank subsidiary of the BHC for unsafe and unsound practices related to derivatives trading activities conducted on behalf of the bank by the CIO. The OCC also entered into a separate Consent Order or Assessment of Civil Money Penalty that required the bank to pay restitution and civil money penalties to address unfair billing practices related to add-on credit card products, and yet another Consent Order with several of the BHC's national bank subsidiaries for unsafe or unsound practices in connection with non-home loan debt collection litigation practices and non-home loan compliance with the Servicemembers Civil Relief Act. The Securities and Exchange Commission imposed an Order against the company for misstating financial results and lacking effective internal controls to detect and prevent traders from fraudulently overvaluing investments. The Bureau of Consumer Financial Protection entered into a Consent Order with a National Bank subsidiary of the BHC that required the bank to pay restitution and civil money penalties to address unfair billing practices related to add-on credit card products.
Federal Reserve Board	State Member Bank	Civil Money Penalty	09/17	The Federal Reserve Board imposed an Order of Assessment of Civil Money Penalty against a Missouri-based state member bank to address violations of the National Flood Insurance Act.
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 From and Consumer Protection Act. t

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