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In This Issue

Bank & Thrift

OCC Proposes Formal Guidelines for Its Heightened Expectations for Large Banks

The Office of the Comptroller of the Currency (OCC) released proposed guidelines that would establish minimum standards for the design and implementation of a risk governance framework for large insured national banks, insured federal savings associations, and insured federal branches of foreign banks with average total consolidated assets of $50 billion or more as well as minimum standards for a board of directors in overseeing the design and implementation of the framework. The proposal would reserve the OCC's authority to apply the guidelines to an institution with less than $50 billion in assets if the OCC determines that it is highly complex or otherwise presents a heightened risk.

The proposed guidelines include provisions regarding:

- The roles and responsibilities of those organizational units that are fundamental to the design and implementation of the risk governance framework
- A comprehensive written statement that articulates the bank's risk appetite, which includes both qualitative components and quantitative limits and serves as a basis for the risk governance framework
- Board of directors' oversight of a bank's compliance with safe and sound banking practices
- Active board oversight of a bank's risk-taking activities, including establishing accountability for management's adherence to the risk governance framework, and evaluating management's recommendations and decisions by questioning, challenging, and opposing, if needed, management proposals that could lead to excessive risk taking or pose a threat to safety and soundness
- Composition of the board of directors (to include at least two independent members who are not part of the bank's or the parent company's management.)

Comments are requested for a period of 60 days following publication in the *Federal Register*.

Federal Reserve Seeks Comment on Physical Commodity Activities Conducted by Financial Holding Companies

The Federal Reserve Board (Federal Reserve) issued an advanced notice of proposed rulemaking (ANPR) on January 14, 2014 seeking public comment on various issues related to physical commodity activities conducted by financial holding companies and the restrictions imposed on these activities to ensure they are conducted in a safe and sound manner and consistent with applicable law. The activities under review include physical commodities activities that have been found to be "complementary to a financial activity" under section 4(k)(1)(B) of the *Bank Holding Company Act* (BHC Act), investment activity under section 4(k)(4)(H) of the BHC Act, and physical commodity activities grandfathered under section 4(o) of the BHC Act. The Federal Reserve is inviting public comment as part of a review of these activities for the reasons explained in the ANPR, including the "unique and significant risks that physical commodities activities may pose to financial holding companies, their insured depository institution affiliates, and U.S. financial stability."

Comments must be received no later than March 15, 2014.

Agencies Release Public Sections of Resolution Plans

On January 10, 2014, the Federal Reserve Board (Federal Reserve) and the Federal Deposit Insurance Corporation (FDIC) released the public portions of resolution plans for 116 institutions that submitted plans for the first time in December 2013. These institutions are those that generally have less than $100 billion in qualifying nonbank assets.

The *Dodd-Frank Wall Street Reform and Consumer Protection Act* requires that bank holding companies (and foreign companies treated as 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 periodically submit resolution plans to the Federal Reserve and the FDIC. Each plan must describe the company's strategy for rapid and orderly resolution in the event of material financial distress or failure of the company, and include both a public and confidential section.

The law required companies subject to the resolution plan requirement to file their initial resolution plans on a staggered schedule. Bank holding companies with $250 billion or more in qualifying nonbank assets first submitted plans in July 2012, while those with $100 billion or more, but less than $250 billion, in qualifying nonbank assets, submitted their initial plans in July 2013. Those companies with less than $100 billion in qualifying nonbank assets were required to submit initial plans in December 2013. The public portions for all of the companies' resolution plans are available on the Federal Reserve and FDIC websites.

In addition, the FDIC released the public sections of the recently filed resolution plans of 22 insured depository institutions. The majority of these insured depository institutions are subsidiaries of bank holding companies that concurrently submitted resolution plans. The insured depository institution plans are required by a separate regulation issued by the FDIC. The FDIC's regulation requires a covered insured depository institution with assets greater than $50 billion to submit a plan under which the FDIC, as receiver, might resolve the institution under the Federal Deposit Insurance Act. The public portions for these companies' resolution plans are available on the FDIC website.

Oversight Body Endorses Basel Committee Proposals for Liquidity Coverage Ratio and Net Stable Funding Ratio

The Group of Governors and Heads of Supervision (GHOS), the oversight body of the Bank for International Settlements' Basel Committee on Banking Supervision (Basel Committee), endorsed a number of steps in the completion of its post-crisis reform agenda during its January 12, 2013 meeting. In particular, the GHOS endorsed Basel Committee proposals regarding:

- A common definition of the leverage ratio. The Basel Committee subsequently published the Basel III leverage ratio framework and disclosure requirements
- Changes to the Net Stable Funding Ratio (NSFR)
- Minimum requirements for liquidity-related disclosures
- Revisions to the Liquidity Coverage Ratio (LCR) to include, at the discretion of monetary authorities, Committed Liquidity Facilities subject to certain constraints
- Strategic priorities for the next two years, including completing the crisis-related policy reform agenda as well as three other broad themes: continuing to deepen its program of

monitoring and assessing the implementation of the agreed reforms; further examining the regulatory framework's balance between simplicity, comparability and risk sensitivity; and improving effectiveness of supervision.

Enterprise & Consumer Compliance

CFPB Seeks Advisory Board and Council Applications

On January 15, 2014, the Bureau of Consumer Financial Protection (CFPB or Bureau) announced that it is seeking applications for positions on its advisory groups, the Consumer Advisory Board (CAB), the Credit Union Advisory Council (CUAC), and the Community Bank Advisory Council (CBAC). The Bureau stated that these advisory groups "serve as key resources to the Bureau by providing valuable input and on-the-ground perspectives."

The *Dodd-Frank Wall Street Reform and Consumer Protection Act*, which created the CFPB, required the establishment of the CAB to provide advice and consultation with the Bureau's director on a variety of consumer financial issues. The CAB meets three times per year. The CBAC and CUAC were created to ensure that the Bureau receives feedback from the community banks and credit unions with asset sizes below $10 billion that are not under the CFPB's supervision but may be affected by Bureau regulations. The CBAC and CUAC meet four times per year.

Applications will be accepted through February 28, 2014.

CFPB Releases New Mortgage Rule Resources for Consumers

The Bureau of Consumer Financial Protection (CFPB or Bureau) released additional resources for consumers on January 7, 2014. The Bureau stated that these resources are part of its campaign to educate the public about the new protections provided by the Bureau's mortgage rules. The new materials include sample letters that consumers can send to their mortgage servicers. The Bureau published these educational materials in anticipation of the January 10, 2014 effective dates for its mortgage rules.

The CFPB stated that its mortgage rules protect consumers by requiring that mortgage lenders evaluate whether borrowers can afford to pay back the mortgage before entering them into a contract. The rules also established new protections for struggling homeowners, including those facing foreclosure.

Capital Markets & Investment Management

Agencies Approve Interim Final Rule Permitting Retention of Certain TruPS CDOs

On January 14, 2014, five federal agencies (Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Securities and Exchange Commission, and Commodity Futures Trading Commission) approved an interim final rule to permit banking entities to retain interests in certain collateralized debt obligations backed primarily by trust preferred securities (TruPS CDOs) from the investment prohibitions of Section 619 of the *Dodd-Frank Wall Street Reform and Consumer Protection Ac*t (Dodd-Frank Act), commonly known as the Volcker rule.

Under the interim final rule, the agencies permit the retention of an interest in or sponsorship of covered funds by banking entities if the following qualifications are met:

- The TruPS CDO was established, and the interest was issued, before May 19, 2010
- The banking entity reasonably believes that the offering proceeds received by the TruPS CDO were invested primarily in Qualifying TruPS Collateral
- The banking entity's interest in the TruPS CDO was acquired on or before December 10, 2013, the date the agencies issued final rules implementing Section 619 of the Dodd-Frank Act.

The federal banking agencies (Federal Reserve Board, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation) concurrently released a nonexclusive list of TruPS CDOs for which the agencies state they will recognize the issuers as meeting the requirements of the interim final rule. The interim final rule states that banking entities may "rely" on this published list.

The interim final rule is effective April 1, 2014 though comments will be accepted for a period of 30 days following publication in the *Federal Register*.

SEC Issues Interpretive Guidance on Municipal Advisor Registration Rules and Extends Registration Date

The Securities and Exchange Commission's (SEC) Office of Municipal Securities issued interpretive guidance on January 10, 2014 to address questions from market participants regarding the implementation of new final SEC rules requiring municipal advisors to register with the SEC. State and local governments frequently use paid advisors to help them decide how and when to issue municipal securities and how to invest proceeds from the sales. The 2010 *Dodd-Frank Wall Street Reform and Consumer Protection Act* required these advisors to register with the SEC, like other market intermediaries. The SEC's final rule was adopted in September 2013. The staff guidance, in the form of answers to frequently asked questions (FAQs), covers the following topics:

- The advice standard, including the general information exclusion and the treatment of business promotional materials used by underwriters
- The request for proposals / request for qualifications exemption
- The exemption for independent municipal advisors
- The exclusion for registered investment advisers
- The underwriter exclusion, including engagements as underwriters
- Issuance of municipal securities and post-issuance advice
- Remarketing agent services
- Opinions by citizens in public discourse
- The effective date of the final rules and the compliance period for using the final registration forms.

On January 13, 2014, the SEC announced that compliance with the final municipal advisor registration rules will not be required until July 1, 2014, the date on which the first set of municipal advisors will be required to register under the final rules.

SEC Announces 2014 Examination Priorities

On January 9, 2014, the Securities and Exchange Commission (SEC) announced its examination priorities for 2014, which cover a wide range of issues at financial institutions, including investment advisers and investment companies, broker-dealers, clearing agencies, exchanges and other self-regulatory organizations, hedge funds, private equity funds, and transfer agents.

The examination priorities address market-wide issues and those specific to particular business models and organizations. The market-wide priorities include fraud detection and prevention, corporate governance and enterprise risk management, technology controls, issues posed by the convergence of broker-dealer and investment adviser businesses and by new rules and regulations, and retirement investments and rollovers.

CFTC Announces Trade Execution Mandate for Certain Interest Rate Swaps

On January 16, 2014, the Commodity Futures Trading Commission (CFTC) announced that Javelin SEF, LLC's (Javelin) self-certification of available-to-trade determinations (MAT Determinations) for certain fixed-to-floating interest rate swap contracts is deemed certified. Transactions involving currency, floating rate indexes, trade start type, optionality, dual currencies, notional, and tenors will be subject to MAT Determinations. Under Commission regulations, these swaps, whether listed or offered by Javelin or any other designated contract market (DCM) or swap execution facility (SEF), will become subject to the trade execution requirement under section 2(h)(8) of the *Commodity Exchange Act* 30 days after certification, on February 15, 2014. All transactions involving swaps that are subject to the trade execution requirement must be executed through a DCM or a SEF. To the extent that swaps subject to the trade execution requirement are executed on a SEF, they must be executed in accordance with the execution methods prescribed by Commission regulation.

CFTC Issues Time-Limited No-Action Relief from Compliance with Certain Conditions Associated with the Receipt of Customer Funds by Futures Commission Merchants

The Commodity Futures Trading Commission (CFTC) issued a no-action letter on January 13, 2014 that provides time-limited relief with respect to compliance with certain conditions associated with the receipt of customer funds by futures commission merchants (FCMs) pursuant to Commission Regulations 1.20, 22.2, and 30.7. The no-action position is conditioned upon the FCM maintaining compliance with its obligation to hold sufficient funds in section 4d(a)(2) segregation accounts, Part 30 secured accounts, and cleared swaps accounts to meet the net liquidating equities of all of the FCM's customers in each respective account origin at all times.

On November 14, 2013, the Commission adopted amendments to Commission Regulations 1.20, 22.2, and 30.7 (Customer Protection Final Rule). In the Customer Protection Final Rule, the Commission listed certain conditions under which an FCM can accept a single payment from a customer for deposit to the customer's section 4d(a)(2) segregation account and, as applicable, Part 30 secured account and cleared swaps account. The relief provided in the letter states that DSIO will not recommend an enforcement action against an FCM that does not comply with certain conditions set forth in the Customer Protection Final Rule in respect of such single payments.

The no-action position expires on April 14, 2014.

Enforcement Actions

The Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), and the Financial Industry Regulatory Authority (FINRA) recently announced the following enforcement actions:

- The SEC charged a global aluminum producer with violating the *Foreign Corrupt Practices Act* (FCPA) when its subsidiaries repeatedly paid bribes to foreign government officials to maintain a key source of business. The company agreed to settle the SEC's charges and a parallel criminal case announced by the U.S. Department of Justice by paying a total of $384 million.
- The SEC charged a public company and two of its former executives for their roles in an accounting scheme to falsify input costs in order to boost earnings and meet estimates by stock analysts. The company agreed to pay $5 million to settle the SEC's charges.
- The SEC announced nearly $300,000 in settlements against a "shell packaging" company and its Chief Executive Officer who were charged with facilitating a penny stock scheme, as well as a stock promoter who received proceeds from the fraud.
- The CFTC obtained a federal court Order requiring an individual to make restitution of $827,000 and pay a $673,000 civil monetary penalty to settle CFTC charges related to fraudulent solicitation and misappropriation of customer funds to trade leveraged off-exchange foreign currency contracts.
- The CFTC issued an Order filing and settling charges against two foreign-based companies that produce and trade cotton and other agricultural products, for failing to comply with their legal obligation as reportable traders to submit weekly Form 304 Reports that show their call cotton purchases and sales.
- The CFTC obtained a federal court Order requiring an Introducing Broker and Commodity Trading Advisor to pay a $50,000 civil monetary penalty to settle record-keeping violation action.

- The CFTC filed a civil injunctive enforcement action against a company, its owner, and an employee, charging the defendants with engaging in illegal, off-exchange financed transactions in precious metals with retail customers.
- FINRA ordered two broker-dealers to pay combined fines of $550,000 and a total of nearly $475,000 in restitution to 65 customers in connection with sales of leveraged and inverse exchange-traded funds (ETFs).
- FINRA barred a vice president of a brokerage firm and a former registered representative from the securities industry for their roles in an insider trading scheme.

Recent Supervisory Actions against Financial Institutions

Last Updated: January 20, 2014

Agency	Institution Type	Action	Date	Synopsis of Action
CFPB	Mortgage lender	Consent Order	1/16	The Bureau of Consumer Financial Protection ordered a Missouri-based mortgage lender and its former owner and current president to pay $81,076 for funneling illegal kickbacks to a bank in exchange for real estate referrals.
Federal Reserve Board	State member bank	Civil Money Penalty	01/09	The Federal Reserve Board entered into an Order of Assessment of Civil Money Penalty with a New York-based state member bank to address violations of the National Flood Insurance Act.
Federal Reserve Board	State member bank	Civil Money Penalty	01/09	The Federal Reserve Board entered into an Order of Assessment of Civil Money Penalty with a Texas-based state member bank to address violations of the National Flood Insurance Act.
OCC	Large financial institution	Order for Civil Money Penalty	1/07	The Office of the Comptroller of the Currency announced a $350 million civil money penalty against three affiliated banks for Bank Secrecy Act (BSA) violations. The penalty follows a January 2013 cease and desist order in which the three banks were directed to correct deficiencies in their compliance programs.

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