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Bank & Thrift

OCC Publishes NPR on Heightened Standards for Large Banks and 12 CFR 30 and 170 Integration

The Office of the Comptroller of the Currency (OCC) released Bulletin 2014-1 on February 5 2014 to announce the publication of its notice of proposed rules and 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. The proposal would also establish minimum standards for an institution's board of directors in overseeing the framework's design and implementation. Both sets of standards are issued pursuant to a federal statute that authorizes the OCC to prescribe, by guideline, operational and managerial standards for national banks and federal savings associations. The standards would be enforceable under the terms of that same statute.

In addition, as part of the agency's ongoing efforts to integrate the regulations of both the OCC and the former Office of Thrift Supervision (OTS), the OCC is requesting comment on its proposal to make 12 CFR 30 and all of its respective appendixes applicable to federal savings associations and to remove part 170 of the OCC's regulations as unnecessary. Parts 30 and 170 both implement the federal statute that authorizes the OCC's issuance of the guidelines and are nearly identical, except that part 30 includes an appendix governing residential mortgage lending.

The proposed rule and guidelines were first released by the OCC on January 16, 2014 and published in the *Federal Register* on January 27, 2014. Comments are requested through March 28, 2014.

FDIC Issues Guidance on Paying Agent Notifications

The Federal Deposit Insurance Corporation (FDIC) released Financial Institution Letter 8-2001 on February 7, 2014 to alert FDIC-supervised institutions to a new rule that requires "paying agents" to send a one-time notification to "unresponsive payees" stating that the agent has sent a securityholder a check that has not yet been negotiated. The new rule, which amends Exchange Act Rule 17Ad-17 to implement the requirements of Section 929W of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, became effective January 23, 2014. The first potential notice to unresponsive payees would be due no later than August 23, 2014.

Under the rule, a "paying agent" includes:

- Any issuer;
- Transfer agent;
- Broker/Dealer;
- Investment adviser;
- Indenture trustee;
- Custodian; or

- Any other person who accepts payments from an issuer of securities and distributes the payments to holders of the security.

A bank that has issued equity or debt securities, whether or not the bank is publicly traded, would qualify as “any issuer.” A securityholder would be considered unresponsive payee if payment is sent to the securityholder by check and the check remains unnegotiated at the time the next regularly scheduled payment is made or six months after the unnegotiated check was sent.

OCC to Host Workshops on Risk Management Issues

The Office of the Comptroller of the Currency (OCC) has announced that it will host two workshops in Houston on March 11 and 12 that will address risk management. The workshops include:

- Compliance Risk – which the OCC states will focus on “major compliance risks and consumer protection regulations, such as the *Flood Disaster Protection Act*, including the recent Biggert Waters amendments, along with core elements of an effective compliance risk management program.”
- Risk Assessment – which discusses “the OCC’s approach to risk-based supervision, and best practices to identify, measure, monitor and control risk. Focus areas include enterprise risk management, operational risk, and cybersecurity, for directors of national community banks and federal savings associations.”

The workshops are among 33 being offered nationwide to enhance and expand the skills of national community bank and federal savings association directors.

Enterprise & Consumer Compliance

CFPB Takes Steps to Improve Reported Mortgage Market Credit Information (HMDA Reporting)

The Bureau of Consumer Financial Protection (CFPB or Bureau) announced on February 7, 2014 that it will be taking steps to improve information reported about the residential mortgage market to help better understand borrowers’ access to credit. As a first step in the rulemaking process, the CFPB is convening a panel of small businesses to provide feedback on potential changes to mortgage information reported under the *Home Mortgage Disclosure Act* (HMDA). The Bureau also unveiled a new online tool that it says makes it easier to navigate publicly available HMDA data.

HMDA was enacted in 1975 to provide information that the public and financial regulators could use to monitor whether financial institutions were serving the housing needs of their communities and providing access to residential mortgage credit. The law requires lenders to disclose information about the home mortgage loans they sell to consumers. HMDA was later

expanded to capture information useful for identifying possible discriminatory lending patterns.

“We are asking for small businesses to provide feedback on ideas to improve the Home Mortgage Disclosure Act, which monitors the largest consumer financial market in the world,” said CFPB Director Richard Cordray. “We want there to be better information, better collection, and better access to this important information.”

OCC Updates the Mortgage Banking Booklet of the Comptroller’s Handbook

The Office of the Comptroller of the Currency (OCC) issued an update to the “Mortgage Banking” booklet of the *Comptroller’s Handbook* on February 7, 2014. The updated booklet replaces a booklet issued in March 1996 (and examination procedures issued in March 1998) and replaces Section 750, “Mortgage Banking,” issued in November 2008 as part of the former Office of Thrift Supervision’s (OTS) *Examination Handbook* for the examination of federal savings associations.

The new “Mortgage Banking” booklet:

- Provides updated guidance to examiners and bankers on assessing the quantity of risk associated with mortgage banking and the quality of mortgage banking risk management
- Includes wholesale changes to the functional areas of production, secondary marketing, servicing, and mortgage servicing rights to incorporate recent lessons learned and regulatory changes
- Addresses recent amendments to Regulation X and Regulation Z issued by the Bureau of Consumer Financial Protection (CFPB), as well as other statutory and regulatory changes, including those directed by the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010*.

Capital Markets & Investment Management

SEC Suspends Trading in 255 Dormant Shell Companies

On February 3, 2014, the Securities and Exchange Commission (SEC) announced the latest actions in its microcap fraud-fighting initiative known as *Operation Shell-Expel*, which included suspending trading in 255 dormant shell companies uncovered in 26 states and two foreign countries that the SEC claims were “ripe for abuse in the over-the-counter market.”

Since the *Operation Shell-Expel* initiative in 2012, the SEC Enforcement Division’s Office of Market Intelligence states that it has been cleaning up the microcap marketplace by scrutinizing penny stocks nationwide and identifying clearly inactive companies. This has enabled the SEC to proactively suspend trading in several hundred dormant shell companies before “fraudsters” have an opportunity to manipulate them, typically through pump-and-dump schemes.

Pump-and-dump schemes are among the most common types of fraud involving microcap companies. Perpetrators will promote a thinly-traded microcap stock through false and misleading statements about the company to the marketplace. After purchasing low and pumping the stock price higher by creating the appearance of market activity, they dump the stock and make profits by selling it into the market at the higher price.

SEC Publishes Draft Strategic Plan for Public Comment

The Securities and Exchange Commission (SEC or Commission) published its Draft Strategic Plan for public comment on February 3, 2014. The draft plan outlines the agency's strategic goals for fiscal years 2014 to 2018.

The draft plan was prepared in accordance with the *Government Performance and Results Modernization Act of 2010*, which requires federal agencies to outline their missions, planned initiatives, and performance goals for a five-year period. It discusses the SEC's environment, details the strategic objectives the SEC seeks to achieve, presents the strategies and initiatives that will be undertaken to accomplish those objectives, and lists the performance goals that will be used to gauge the Commission's progress.

The SEC's draft plan surveys the forces shaping its environment and outlines more than 70 initiatives designed to support its four primary strategic goals, including the following:

- Establish and maintain an effective regulatory environment;
- Foster and enforce compliance with the federal securities laws;
- Facilitate access to the information investors need to make informed investment decisions; and
- Enhance the Commission's performance through effective alignment and management of human, information, and financial capital.

BATS Global Markets, FINRA Enter Regulatory Service Agreement

BATS Global Markets, Inc. (BATS) has signed an agreement with the Financial Industry Regulatory Authority (FINRA) to provide cross-market surveillance services to BATS' four stock exchanges, BZX, BYX, EDGX and EDGA, along with "certain other regulatory services."

By aggregating trading data from BATS with data from NASDAQ's, NYSE Euronext's and FINRA's equity markets, and the two exchanges previously operated by Direct Edge that were recently merged with BATS, FINRA will be able to conduct comprehensive surveillance across 99 percent of the market for U.S. listed equities. Presently, FINRA conducts cross-market surveillance for 90 percent of the listed equities market.

FINRA anticipates that, through comprehensive cross-market surveillance, it will be able to detect and deter instances where a market participant engages in potentially abusive conduct on two or more markets in an attempt to avoid detection. FINRA states that the expansion of its cross market surveillance program to 99 percent of the market by virtue of the inclusion of all of BATS' exchanges promotes the effectiveness of the program and further protects investors and market integrity.

Allowing for necessary technical and operational configuration changes, FINRA expects BATS will be included in FINRA's cross market surveillance program during the first quarter of 2015.

Effective immediately, FINRA will also perform examination and disciplinary services on behalf of BATS.

Enforcement Actions

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

- The SEC announced the filing of stop order proceedings against 20 purported mining companies believed to have included false information in their registration statements. The purpose of a stop order is to prevent the sale of privately held shares to the public under a registration statement that is materially misleading or deficient. If a stop order is issued, no new shares can enter the market pursuant to that registration statement until the company has corrected the deficiencies or misleading information in the prospectus.
- The SEC announced charges against two traders involved in a fraudulent “parking” scheme in which one temporarily placed securities in the other’s trading book to avoid penalties that would affect the trader’s year-end bonus.
- FINRA announced that it has fined an investment bank \$8 million for anti-money laundering compliance failures, including its failure to have an adequate anti-money laundering program in place to monitor and detect suspicious penny stock transactions. The investment bank also failed to sufficiently investigate potentially suspicious penny stock activity brought to the firm’s attention and did not fulfill its Suspicious Activity Report (SAR) filing requirements. In addition, the bank did not have an adequate supervisory system to prevent the distribution of unregistered securities. The investment bank’s former Global AML Compliance Officer was also fined \$25,000 and suspended for one month.

Recent Supervisory Actions against Financial Institutions

Last Updated: February 10, 2014

Agency	Institution Type	Action	Date	Synopsis of Action
CFPB	Mortgage lender	Notice of Charges	1/29	The Bureau of Consumer Financial Protection initiated an administrative proceeding against a New Jersey-based mortgage lender and its affiliates for a mortgage insurance kickback scheme. The Bureau is seeking a civil fine, a permanent injunction to prevent future violations, and restitution.
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.
OCC	Large financial institution	Order for Civil Money Penalty	1/7	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.
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.
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.
CFPB	Large financial institution	Consent Order	12/23	The Bureau of Consumer Financial Protection entered into a Consent Order with a large financial institution to resolve the CFPB's claims that the institution engaged in a pattern or practice of discrimination on the basis of race and national origin in residential mortgage lending in violation of the Equal Credit Opportunity Act. The Consent Order requires the institution to pay \$35 million in restitution.
CFPB, OCC, FDIC	Various	Consent Order, Order for Restitution, Order for Civil Money Penalty	12/23	The Bureau of Consumer Financial Protection, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation each participated in actions against a financial institution and certain of its subsidiaries to address unfair and deceptive marketing practices related to credit card "add on" products. Collectively, the orders require \$59.5 million in restitution and civil money penalties of \$16.2 million.
CFPB	Large financial institution	Consent Order, Civil Money Penalty	12/20	The Bureau of Consumer Financial Protection entered into a Consent Order to with a resolve the CFPB's claim that the financial institution, an indirect auto lender, violated the anti-discrimination provisions of the Equal Credit Opportunity Act. The institution was required to pay \$80 million in damages to affected borrowers and an additional \$18 million civil money penalty.

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