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# Bank & Thrift

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## Federal Reserve Board and OCC Permit Certain Institutions to Begin to Use Advanced Approaches for Risk-Based Capital

On February 21, 2014, the Federal Reserve Board and the Office of the Comptroller of the Currency announced they were permitting certain banking organizations to begin using the “Advanced Approaches” framework to determine their risk-based capital requirements.

The agencies’ Advanced Approaches capital framework, which implements standards developed by the Basel Committee on Banking Supervision, requires firms to meet specific risk measurement and management criteria when calculating their risk-based capital requirements. The framework applies to large, internationally active banking organizations, generally those with at least \$250 billion in total consolidated assets or at least \$10 billion in total on-balance sheet foreign exposure, and includes the depository institution subsidiaries of those firms.

In the U.S., before a banking organization may use the Advanced Approaches framework to determine its risk-based capital requirements, it must conduct a satisfactory trial, or “parallel run,” using the Advanced Approaches framework. Under the supervision of its regulator, a firm must show it can comply with the Advanced Approaches framework during the parallel run period for at least four consecutive calendar quarters using risk-measurement and risk-management systems that adhere to the Advanced Approaches framework.

Eight bank holding companies (BHCs), eight national banks, and four state member banks have completed their parallel run and will use the Advanced Approaches framework to calculate and publicly disclose their risk-based capital ratios beginning with the second quarter of 2014. Under the capital rules finalized by U.S. regulators in July 2013, these firms must meet the minimum risk-based capital ratios under both the Advanced Approaches and the generally applicable risk-based capital frameworks.

Also on February 21, the Federal Reserve Board issued a final rule clarifying that BHCs using the Advanced Approaches framework will incorporate those changes into the capital planning and stress testing cycles that begin October 1, 2015. The Federal Reserve Board previously adopted two interim final rules requiring firms to incorporate the Advanced Approaches framework into their capital planning and stress testing cycles that begin October 1, 2014. The final rule provides the agency and the institutions additional time to integrate the Advanced Approaches framework into their respective stress testing and capital planning processes.

## Federal Reserve Board Finalizes Enhanced Prudential Standards Rule for Certain Bank Holding Companies and Foreign Banking Organizations

On February 18, 2014, the Board of Governors of the Federal Reserve System (Federal Reserve Board) approved a final rule, Regulation YY, that establishes enhanced prudential standards for U.S. bank holding companies (BHCs) and foreign banking organizations (FBOs) with total global consolidated assets of more than \$50 billion. Nonbank financial companies

deemed systemically important by the Financial Stability Oversight Council (Council) and supervised by the Federal Reserve Board are not covered by the final rule though the Federal Reserve Board states it will apply enhanced prudential standards to individual nonbank financial companies by rule or order.

The final rule implements portions of Section 165 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) related to: risk-based and leverage capital requirements; liquidity standards; overall risk management, including risk committees; stress testing requirements; and a debt-to-equity ratio for BHCs that the Council has determined pose a grave threat to financial stability. Provisions governing single counterparty credit limits (SCCL) and early remediation (required under Section 166 of the Dodd-Frank Act) were not included in the final rule but are expected to be released separately. The final rule also imposes risk committee and stress testing requirements on certain U.S. BHCs and FBOs with total consolidated assets of \$10 billion or more. As finalized, the rule is substantially similar to the proposal previously released in December 2011.

With regard to FBOs, the final rule generally follows the Section 165 requirements as proposed in December 2012, except the assets threshold applicable to the supplemental enhanced standard that requires FBOs to form an intermediate holding company (IHC) in the United States has been raised to \$50 billion or more in non-branch U.S. assets. In addition, IHCs will be subject only to the standardized approach and will not have to apply the advanced approaches risk-based rules, and the liquidity buffer required of U.S. branches will be reduced from 30 days to 14 days.

Notably, the rule becomes effective June 1, 2014. BHCs will be required to comply with the final rule requirements beginning January 1, 2015. FBOs will be expected to comply beginning July 1, 2016, and FBOs that have \$50 billion or more in non-branch U.S. assets as of June 30, 2014 will be required to submit an implementation plan by January 1, 2015 outlining their proposed process to comply with the final rule by the July 1, 2016 date. An FBO's U.S. IHC will generally have until January 1, 2018 to comply with the leverage capital requirements.

The Federal Reserve Board staff estimates that 24 U.S. BHCs and approximately 100 FBOs will be impacted by the final rule, and as many as 20 FBOs will meet the IHC requirement.

## [FDIC Extends Comment Period on Single Point of Entry Strategy Proposal for the Resolution of SIFIs](#)

The Federal Deposit Insurance Corporation (FDIC) has extended the comment period for its Single Point of Entry (SPOE) strategy for the resolution of Systemically Important Financial Institutions (SIFIs). The SPOE strategy was approved for publication in the *Federal Register* by the FDIC Board of Directors on December 10, 2013. The extension will allow interested persons additional time to analyze the SPOE Strategy and prepare their comments. All comments must now be received on or before March 20, 2014.

## [OCC to Host Directors' Workshops Related to Risk Management](#)

The Office of the Comptroller of the Currency (OCC) announced that it will host two workshops on risk management in Richmond, Virginia for directors of national community banks and federal savings associations. In particular, the workshops include:

- *Compliance Risk* – which focuses on “major compliance risks and consumer protection regulations, such as the Qualified Mortgage Rule and Bank Secrecy Act, along with key elements of an effective compliance risk management program;” and
- *Credit Risk: A Director’s Focus* – which focuses on “the roles of the board and bank management, current events, emerging industry trends, and a range of credit issues, from structuring credit to collections.”

Additional information is available on the OCC Web site.

## Enterprise & Consumer Compliance

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### Deputy Director Speaks to Mortgage Bankers on CFPB Expectations for the Mortgage Credit Markets

Steven Antonakes, Deputy Director for the Consumer Financial Protection Bureau (CFPB or Bureau), spoke before the Mortgage Bankers Association on February 19, 2014. In his remarks, he outlined the CFPB’s expectations regarding the responsibilities of mortgage servicers now that the new mortgage rules are in effect. In particular, Mr. Antonakes stated, “in the early months we will look to see that those subject to the rules have made a good faith effort to comply. A good faith effort, however, does not mean servicers have the freedom to harm consumers.” He added the CFPB expects:

- Technical issues to be identified and corrected;
- Loss mitigation applications to be assessed with care, “so that consumers who qualify under the servicer’s own standards get the loss mitigation that saves them – and the investor – from foreclosure;”
- Close attention to be paid to servicing transfers - noting that “all information and documents” should be transferred;
- Existing permanent or trial loan modifications to be honored; and
- Force-placed insurance to be considered as a last resort.

Mr. Antonakes concluded, “Our new mortgage servicing rules are now subject to federal supervision and enforcement across the entire marketplace. Our enforcement actions to date have already ordered the return of more than \$1 billion to consumers and mandated another \$2 billion in foreclosure relief. Mortgage servicing rule compliance is a significant priority for the Bureau. Accordingly, we will be vigilant about overseeing and enforcing these rules.

### CFPB Has Responded to More Than 300,000 Complaints

The Consumer Financial Protection Bureau (CFPB) announced in a February 20, 2014 blog post that it has received and responded to more than 300,000 consumer complaints since July 2011. The CFPB accepts consumer complaints for consumer financial products and services related to: debt collection, credit reporting, payday loans, student loans, other consumer loans, money transfers, mortgages, and bank accounts and services. The CFPB separately

encourages consumers to tell their story, “good or bad,” about their experiences with consumer financial products and services.

## Capital Markets & Investment Management

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### FINRA Guidance Announces New Reporting Requirements for Alternative Trading Systems

The Financial Industry Regulatory Authority (FINRA) released Regulatory Notice 14-07 to announced the Securities and Exchange Commission (SEC) had approved a rule change to require alternative trading systems (ATS) to (i) report to FINRA weekly volume information and number of securities transactions within the ATS by security, and (ii) acquire and use a single, unique market participant identifier (MPID) when reporting information to FINRA. The ATS reporting requirement will be implemented beginning May 12, 2014. The first ATS reports for the week of May 12 through May 16, 2014, will be due by May 28, 2014. Each ATS must report order and trade information to FINRA using a unique MPID by November 10, 2014.

### Enforcement Actions

The Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) recently announced the following enforcement actions:

- The SEC announced an emergency action against an investment banker for insider trading through the account of a friend. The SEC claims the investment banker illegally generated profits of nearly \$1 million and has taken action to freeze the assets in the account.
- The SEC announced charges against a foreign firm for violating the federal securities laws by providing cross-border brokerage and investment advisory services to U.S. clients without first registering with the SEC. To settle the charges, the firm agreed to pay \$196 million (in disgorgement, prejudgment interest, and penalties) and to admit to wrongdoing.
- The SEC charged three California residents with defrauding investors in a purported multi-million movie project that they said would generate exorbitant investment returns. The individuals were found to have spent most of the invested funds for their personal uses.
- The CFTC filed an enforcement action against two individuals charging they fraudulently solicited, directly and through others, approximately \$2.3 million from at least 11 individuals to trade leveraged or margined off-exchange foreign currency contracts, and that they misappropriated at least \$1.6 million of their customers’ funds.
- The CFTC filed and settled charges against a firm and its sole owner for solicitation fraud and engaging in illegal, off-exchange precious metals transactions. Neither the firm nor its owner has ever been registered with the CFTC. The Order requires the defendants to jointly pay a \$1,565,000 civil monetary penalty and restitution to their customers totaling \$4,696,640. The Order also imposes permanent trading and registration bans against them and prohibits them from violating the provisions of the *Commodity Exchange Act* and a CFTC Regulation, as charged.

## Recent Supervisory Actions against Financial Institutions

Last Updated: February 24, 2014

Agency	Institution Type	Action	Date	Synopsis of Action
CFPB	Mortgage lender	Notice of Charges	1/29	The Consumer Financial Protection Bureau 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 Consumer Financial Protection Bureau 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 <i>Bank Secrecy Act</i> (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 Consumer Financial Protection Bureau 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 <i>Equal Credit Opportunity Act</i> . 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 Consumer Financial Protection Bureau, 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 Consumer Financial Protection Bureau 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 <i>Equal Credit Opportunity Act</i> . 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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