



In This Issue

Bank & Thrift Regulatory Update

Federal Reserve Board Announces Publication Dates for Stress Test Results	1
Federal Reserve Board Extends Comment Period for ANPR on Physical Commodity Activities Conducted by FHCs	1
Federal Reserve to Begin Publishing Semi-Annual Report with Aggregate Data and Other Information in Bank Applications	2
FDIC Releases Banking Industry Financial Results for the Fourth Quarter of 2013	2

Enterprise & Consumer Compliance

CFPB Issues Bulletin Highlighting Obligation of Furnishers to Investigate Credit Report Disputes and Report on Related Complaints	3
CFPB Enforcement Actions Announced	4
FDIC Issues Interagency Examination Guidance for Residential Mortgage Loan Rules Revised by Dodd-Frank Act	4

Capital Markets & Investment Management

CFTC Staff Advisory Outlines Best Practices for Compliance with Security Safeguards.....	5
FINRA Guidance Announces Proposed Rules Governing Limited Corporate Financial Brokers.....	5
FINRA Guidance Announces SEC Approval of Amendments Related to BrokerCheck Disclosures.....	5
Enforcement Actions	6

Recent Supervisory Actions

Bank & Thrift

Federal Reserve Board Announces Publication Dates for Stress Test Results

The Federal Reserve Board (Federal Reserve) announced on February 25, 2014, that results from the latest supervisory stress tests conducted as part of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* will be released on Thursday, March 20, and the related results from the Federal Reserve's Comprehensive Capital Analysis and Review (CCAR), will be released on Wednesday, March 26.

The Dodd-Frank Act stress tests (DFAST) are forward-looking exercises conducted by the Federal Reserve and large financial companies supervised by the Federal Reserve. The exercises help assess whether institutions have sufficient capital to absorb losses and support operations during adverse economic and financial market conditions over a period of nine quarters. The DFAST results will include data such as post-stress capital ratios, revenue, and loss estimates under hypothetical adverse and severely adverse scenarios provided by the Federal Reserve. The capital ratios assume a common set of capital actions for all of the firms. The Federal Reserve notes that the standardized capital actions used in the DFAST results provide for comparability across the firms, as they assume no changes in recent levels of dividend payments and no common stock repurchases.

CCAR is an annual exercise by the Federal Reserve to help assess whether the companies have robust, forward-looking capital planning processes that account for their unique risks and are supported by the firms' risk-measurement and -management practices. As part of the CCAR, the Federal Reserve evaluates each company's plans to make capital distributions, such as dividend payments, stock repurchases, or planned acquisitions. CCAR results will include post-stress capital ratios under hypothetical adverse and severely adverse scenarios provided by the Federal Reserve and will reflect the capital actions the companies plan to undertake during the nine-quarter period. In addition to the quantitative results, the Federal Reserve will indicate whether it has objected to a firm's capital plan based on qualitative grounds.

Federal Reserve Board Extends Comment Period for ANPR on Physical Commodity Activities Conducted by FHCs

The Federal Reserve Board (Federal Reserve) announced on February 27, 2014, that it has extended the public comment period on its advance notice of proposed rulemaking regarding physical commodity activities conducted by financial holding companies (FHCs) an additional 30 days. Comments are now due April 16, 2014.

The Federal Reserve is considering whether additional restrictions would help ensure that physical commodities activities of FHCs are conducted in a safe and sound manner and do not pose a threat to financial stability. The Federal Reserve states that it extended the comment period to allow interested persons more time to analyze the issues and prepare their comments.

Federal Reserve to Begin Publishing Semi-Annual Report with Aggregate Data and Other Information in Bank Applications

The Federal Reserve Board (Federal Reserve) announced on February 24, 2014, that it will soon begin publishing a semi-annual report with aggregate data and other information regarding banking applications. The report will be released in the second half of 2014 and include statistics on the length of time taken to process applications and notices, the number of approvals, denials, and withdrawals, and the primary reasons for withdrawals.

The Federal Reserve explains that when it receives an application (e.g., a proposed acquisition or a request to establish a branch), it evaluates the application in light of statutory factors, including financial condition, performance under the *Community Reinvestment Act* (CRA), and managerial experience. If the Federal Reserve Board approves the application, an announcement to the public is made. However, if issues are identified that could result in Federal Reserve staff recommending denial of a proposal to the Federal Reserve Board, staff informs the filer of the particular issues. In some cases, the filer chooses to withdraw the application. The Federal Reserve states that the new report will increase transparency of the applications process by providing more detailed information to the public and supervised institutions regarding the bases for withdrawn applications.

Also on February 24, 2014, the Federal Reserve released guidance describing common issues it has identified that have led to recent withdrawal of applications. Some of those issues include less-than-satisfactory supervisory rating(s) for safety and soundness, consumer compliance, or CRA; inadequate compliance with the *Bank Secrecy Act*; and concerns regarding the financial condition or management of the proposed organization.

FDIC Releases Banking Industry Financial Results for the Fourth Quarter of 2013

On February 26, 2014, the Federal Deposit Insurance Corporation (FDIC) released the financial results for the banking industry during the fourth quarter of 2013. Highlights of this *Quarterly Banking Profile* include the following:

- Insured commercial banks and savings institutions reported aggregate net income of \$40.3 billion, a 16.9 percent increase from a year earlier. This reflects the 17th time in the last 18 quarters that earnings have registered a year-over-year increase. The improvement in earnings was mainly attributable to an \$8.1 billion decline in loan-loss provisions.
- The proportion of banks that were unprofitable fell to 12.2 percent, from 15 percent in the fourth quarter of 2012.
- The average return on assets (ROA) rose to 1.10 percent in the fourth quarter from 0.96 percent a year ago. The average return on equity (ROE) increased from 8.53 percent to 9.87 percent.
- Fourth quarter net operating revenue totaled \$166.1 billion, a decline of 1.7 percent from a year earlier, noninterest income fell by 6.6 percent and net interest income increased by 1.3 percent.
- Total noninterest expenses were 5.3 percent lower than in the fourth quarter of 2012. Banks set aside \$7 billion in provisions for loan losses, a reduction of 53.7 percent compared to a year earlier.
- Asset quality indicators continued to improve as insured banks and thrifts charged off \$11.7 billion in uncollectible loans during the quarter, down 37 percent from a year earlier. The amount of noncurrent loans and leases — those 90 days or more past due or in nonaccrual status — fell by 6.3 percent during the quarter. The percentage of loans and

leases that were noncurrent declined to 2.62 percent, the lowest level since the 2.35 percent posted at the end of the third quarter of 2008.

- Net income over the full year of 2013 totaled \$154.7 billion, an increase of 9.6 percent compared to 2012. More than half of all institutions (54.2 percent) reported higher net income in 2013, while only 7.8 percent were unprofitable. This is the lowest annual proportion of unprofitable institutions since 2005.
- Loan balances increased by \$90.9 billion (1.2 percent) in the three months ending December 31, as all major loan categories except one- to four-family residential real estate loans experienced growth during the quarter.
- One- to four-family residential real estate loans originated and intended for sale were 62 percent lower than in the fourth quarter of 2012, as rising interest rates in the first half of 2013 reduced the demand for mortgage refinancings. Noninterest income from the sale, securitization and servicing of mortgages as well as realized gains on available-for-sale securities were also lower than a year ago,
- The number of banks on the FDIC's "Problem List" declined from 515 to 467 during the quarter.

Enterprise & Consumer Compliance

[CFPB Issues Bulletin Highlighting Obligation of Furnishers to Investigate Credit Report Disputes and Report on Related Complaints](#)

The Consumer Financial Protection Bureau (CFPB) released Bulletin 2014-01 on February 27, 2014 to highlight the obligation of furnishers of information to consumer reporting agencies (CRAs) to investigate disputed information in a consumer report. The CFPB states that it is concerned that, when a furnisher responds to a consumer's dispute, it may, without conducting an investigation, simply direct the CRA to delete the item it has furnished. The Bulletin is intended to put "furnishers on notice that taking a shortcut by simply deleting a line in a credit report does not generally constitute a reasonable investigation of a consumer dispute that is enough to satisfy their obligations under the law."

The guidance states that if a consumer submits a dispute to a CRA regarding an account in a consumer report and the CRA provides the furnisher of that account with notice of that dispute, the furnisher should investigate the dispute, and, if appropriate, direct the CRA to correct or delete the disputed information. Similarly, if the consumer submits a direct dispute notice to the furnisher, the furnisher generally should conduct an investigation of the dispute and then, based on the results of the investigation, provide appropriate instructions to the CRA. A furnisher should not assume that it ceases to be a furnisher with respect to an item that a consumer disputes simply because it directs the CRA to delete that item.

Coincident with the release of Bulletin 2014-01, the CFPB released a report entitled, "*Credit reporting complaint snapshot*." In this report, the CFPB states that since October 2012 when the Bureau began accepting credit reporting complaints, nearly 75 percent of those complaints

related to incorrect information reported on a consumer's credit reports. A consumer's notification to a CRA that certain reported information is incorrect is considered to be a dispute.

CFPB Enforcement Actions Against Nonbank Financial Institutions

During the week of February 24, 2014, the Consumer Financial Protection Bureau (CFPB or Bureau) announced the following enforcement actions:

- The CFPB ordered a mortgage lender to pay an \$83,000 civil money penalty for violating federal law by illegally splitting real estate settlement fees in violation of the *Real Estate Settlement Protection Act* (RESPA). The CFPB states the mortgage lender "self-reported these violations to the Bureau, admitted liability, and provided information related to the conduct of other actors that has facilitated other enforcement investigations." The CFPB added the mortgage lender's self-reporting and cooperation were consistent with the Bureau's Responsible Business Conduct Bulletin (2013-06) and were taken into account in resolving the matter.
- The CFPB filed a lawsuit against a for-profit college chain charging them with predatory student lending practices. The CFPB is seeking restitution for victims, a civil fine, and an injunction against the company.

The CFPB separately notes that, effective March 1, 2014, it began exercising supervisory authority over certain large non bank servicers of federal and private student loans.

FDIC Issues Interagency Examination Guidance for Residential Mortgage Loan Rules Revised by Dodd-Frank Act

The Federal Deposit Insurance Corporation (FDIC) released Financial Institution Letter 9-2014 on February 25, 2014 to issue revised interagency consumer compliance examination procedures for the mortgage rules issued pursuant to the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act). The FDIC anticipates the examination procedures will be helpful to financial institutions seeking to better understand the areas the FDIC will focus on as part of the examination process.

The revised interagency procedures will be used by examiners to evaluate institutions' compliance with the following residential mortgage loan rules issued pursuant to the Dodd-Frank Act:

- *Ability-to-Repay/Qualified Mortgage Rule* – requires creditors to make a reasonable and good faith determination that the consumer has a reasonable ability to repay a mortgage loan.
- *Loan Originator Compensation Rule* – regulates loan originator compensation and establishes qualification and training requirements.
- *Mortgage Servicing Rules* – implements amendments to the *Real Estate Settlement Procedures Act* (RESPA) and the *Truth in Lending Act* (TILA) regarding mortgage loan servicing.
- *High-Cost Mortgage and Homeownership Counseling Amendments Rule* – implements the Dodd-Frank Act provisions amending TILA and RESPA concerning consumer protections associated with high-cost mortgages and homeownership counseling.
- *Higher-Priced Mortgage Loan (HPML) Escrow Rule* – requires creditors to establish and maintain, for a minimum of five years, escrow accounts for certain HPMLs.
- *HPML Appraisal Rule* – requires appraisals for certain HPMLs.
- *Equal Credit Opportunity Act (ECOA) Appraisal Rule* – requires creditors to provide a copy of an appraisal or other property valuation as a matter of course, rather than providing

copies only upon an applicant's request.

The guidance states that, during initial examinations for compliance with the new regulations, FDIC examiners will expect institutions to be familiar with the mortgage rules' requirements and have a plan for implementing the requirements. Implementation plans should contain clear timeframes and benchmarks for making necessary changes to compliance management systems and relevant programs. FDIC examiners will consider the overall compliance efforts of an institution and take into account progress the institution has made in implementing its plan.

Capital Markets & Investment Management

[CFTC Staff Advisory Outlines Best Practices for Compliance with Security Safeguards](#)

The Commodity Futures Trading Commission's (CFTC) Division of Swap Dealer and Intermediary Oversight issued Staff Advisory 14-21 on February 26, 2014 that outlines recommended best practices for covered financial institutions to comply with the *Gramm-Leach-Bliley Act* and the CFTC's regulations concerning information security and privacy safeguards. The CFTC states these recommendations are consistent with guidelines and regulations issued by the Federal financial regulators regarding the Title V requirements of the *Gramm-Leach-Bliley Act*.

[FINRA Guidance Announces Proposed Rules Governing Limited Corporate Financial Brokers](#)

The Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 14-09 to announce that it is soliciting public comment on a proposed set of rules for firms that meet the definition of "limited corporate financing broker" (LCFB). An LCFB is a firm that engages in a limited range of activities, essentially advising companies and private equity funds on capital raising and corporate restructuring. The set of rules would not apply to firms that carry or maintain customer accounts, handle customers' funds or securities, accept customers' trading orders, or engage in proprietary trading or market-making. Comments are requested through April 28, 2014.

[FINRA Guidance Announces SEC Approval of Amendments Related to BrokerCheck Disclosures](#)

The Financial Industry Regulatory Authority (FINRA) released Regulatory Notice 14-08 to announce that the Securities and Exchange Commission (SEC) approved two rule changes related to FINRA Rule 8312 (FINRA BrokerCheck Disclosure). More specifically, the SEC approved rule changes, effective June 23, 2014, as follows:

- Amendments to permanently make publicly available in BrokerCheck information about former associated persons of a FINRA member firm who were registered on or after

August 16, 1999, and who have been the subject of an investment-related civil action brought by a state or foreign financial regulatory authority that was dismissed pursuant to a settlement agreement.

- Amendments to include in BrokerCheck information about member firms and their associated persons of any registered national securities exchange that uses the Central Registration Depository (CRD) for registration purposes. Both rule changes will become effective on June 23, 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 private equity fund manager and his investment advisory firm with conducting a scheme to misallocate their expenses to the funds they manager. Together more than \$3 million in expenses were paid by 19 equity investment funds. The SEC's order alleges willful violation of the federal securities laws antifraud provisions, and also asserts disclosure, compliance, custody, and reporting violations.
- The CFTC announced that a U.S. District Court Judge granted the CFTC's motion for summary judgment and entered an Order of permanent injunction against a defendant previously charged by the CFTC with fraud, misappropriation, and registration violations in operating two scams, one involving fraud while acting as a Commodity Pool Operator (CPO) and the other involving fraud while acting as a Commodity Trading Advisor (CTA). The Order imposes permanent trading and registration bans against Brown and requires him to pay restitution and disgorgement totaling \$1,131,941.98 and a civil monetary penalty of \$140,000
- The CFTC announced that a U.S. District Court Judge entered a default judgment and permanent injunction Order against two defendants previously charged with misappropriation of investor funds. The Order requires the defendants to pay nearly \$12.2 million in disgorgement and more than \$3.6 million in civil monetary penalties. The Order also imposes permanent trading and registration bans against them and prohibits them from violating the Commodity Exchange Act and a CFTC regulation, as charged.
- FINRA fined a company and its affiliate a combined \$775,000 for supervisory deficiencies, including failure to supervise the sale of non-traded real estate investment trusts (REITs), and leveraged and inverse exchange-traded funds (ETFs). As part of the settlement, the company must retain an independent consultant to improve its supervisory procedures relating to its sale of alternative investments.

Recent Supervisory Actions against Financial Institutions

Last Updated: March 3, 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.

Contact Us

This is a publication of KPMG's Financial Services Regulatory Practice

John Ivanoski, Partner, National Leader, Regulatory Risk	jivanoski@kpmg.com
Hugh Kelly, Principal, Bank Regulatory Safety & Soundness	kcnelly@kpmg.com
Amy Matsuo, Principal, Enterprise & Consumer Compliance	amatsuo@kpmg.com
John Schneider, Partner, Investment Management Regulatory	jschneider@kpmg.com
Tracy While, Principal, Capital Markets Regulatory	twhile@kpmg.com
Pamela Martin, Managing Director, Americas' FS Regulatory Center of Excellence	pamelamartin@kpmg.com

Earlier editions are available at:

<http://www.kpmg.com/US/en/IssuesAndInsights/ArticlesPublications/washington-reports/Pages/default.aspx>

Additional Contacts

Asset Management, Trust, and Fiduciary

Bill Canellis wcanellis@kpmg.com

Bank Regulatory Reporting

Brett Wright bawright@kpmg.com

Capital Markets Regulation

Stefan Cooper stefancooper@kpmg.com

Capital/Basel II and III

Paul Cardon pcardon@kpmg.com

Commodities and Futures Regulation

Dan McIsaac dmcisaac@kpmg.com

Consumer & Enterprise Compliance

Kari Greathouse cgreathouse@kpmg.com

Cross-Border Regulation & Foreign Banking Organizations

Philip Aquilino paquilino@kpmg.com

Safety & Soundness, Corporate Licensing & Governance, and ERM Regulation

Greg Matthews gmatthews1@kpmg.com

America's FS Regulatory Center of Excellence

Pamela Martin pamelamartin@kpmg.com

ALL INFORMATION PROVIDED HERE IS OF A GENERAL NATURE AND IS NOT INTENDED TO ADDRESS THE CIRCUMSTANCES OF ANY PARTICULAR INDIVIDUAL OR ENTITY. ALTHOUGH WE ENDEAVOR TO PROVIDE ACCURATE AND TIMELY INFORMATION, THERE CAN BE NO GUARANTEE THAT SUCH INFORMATION IS ACCURATE AS OF THE DATE IT IS RECEIVED OR THAT IT WILL CONTINUE TO BE ACCURATE IN THE FUTURE. NO ONE SHOULD ACT UPON SUCH INFORMATION WITHOUT APPROPRIATE PROFESSIONAL ADVICE AFTER A THOROUGH EXAMINATION OF THE FACTS OF THE PARTICULAR SITUATION.

©2014 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. The KPMG name, logo and "cutting through complexity" are registered trademarks or trademarks of KPMG International. KPMG LLP, the audit, tax and advisory firm (www.kpmg.com/us), is the U.S. member firm of KPMG International Cooperative ("KPMG International"). KPMG International's member firms have 145,000 professionals, including more than 8,000 partners, in 152 countries. Printed in the U.S.A. All rights reserved. NDPPS 146154