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Bank & Thrift

Federal Reserve Releases 2014 Supervisory Stress Test Results

On March 20, 2014, the Federal Reserve Board (Federal Reserve) released the results of the 2014 supervisory stress tests conducted by the agency for bank holding companies (BHCs) with total consolidated assets of \$50 billion or more. Thirty BHCs were subjected to the supervisory stress tests, which are required by the *Dodd Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) and are generally referred to as DFAST.

The Federal Reserve's 2014 DFAST report discloses the results of the supervisory stress tests conducted under hypothetical, stressful macroeconomic and financial market scenarios (i.e., adverse and severely adverse) developed by the Federal Reserve. Broadly, the agency states the results indicate "the largest banking institutions in the United States are collectively better positioned to continue to lend to households and businesses and to meet their financial commitments in an extremely severe economic downturn than they were five years ago." All but one of the BHCs were found to have capital in excess of the minimum capital ratios under the two scenarios (which reflect a phase-in of the Basel III capital ratios). The one firm failed to meet one minimum risk-based capital ratio under the severely adverse scenario. However, there are no penalties under DFAST directly associated with failure to meet the minimum capital ratios.

The Federal Reserve released "corrected" 2014 DFAST results on March 21, 2014, acknowledging the results were substantially the same for most firms and no additional firms failed to meet any of the minimum capital ratio thresholds.

The Federal Reserve is expected to release results from its Comprehensive Capital Analysis and Review (CCAR), which, among other things, incorporates the DFAST supervisory stress tests, on March 26, 2014. In CCAR, the Federal Reserve evaluates the capital planning processes and capital adequacy of the BHCs with total consolidated assets of \$50 billion or more, including the firms' proposed capital actions such as dividend payments and share buybacks and issuances. The Federal Reserve considers both qualitative and quantitative factors, including the firm's capital ratios under severe economic and financial market stress. If the Federal Reserve objects to a capital plan submitted under CCAR, the institution may only make capital distributions with prior written approval. The Federal Reserve may object to a capital plan for qualitative reasons even if the BHC meets all capital ratio expectations.

Comptroller Speaks About Risk Management Concerns Associated with BSA/AML Compliance

Thomas Curry, Comptroller of the Currency, spoke before the Association of Certified Anti-Money Laundering Specialists on March 17, 2014. His remarks focused on compliance with the Bank Secrecy Act/Anti-Money Laundering laws (BSA/AML) but were broadly applicable to other risk management concerns of current interest to the Office of the Comptroller of the Currency (OCC) and other federal bank regulatory agencies.

Comptroller Curry opened his remarks stating the “vast majority” of institutions were doing a “good job” with BSA/AML compliance. He added that the issues underlying BSA infractions can “almost always” be traced back to decisions and actions of the institution’s board of directors and senior management. He said these underlying deficiencies fall into four areas: the culture of compliance; the resources committed; the strength of the organization’s information technology and monitoring process; and the quality of risk management. He said these are qualities that have an impact well beyond BSA/AML compliance and that “go a long way toward explaining how well an institution deals with credit and operational risk.”

Comptroller Curry focused on the role of the board and senior management, stating they must “walk the talk” by ensuring that there is an alignment between good compliance practices (including providing increased resources and increasing the authority and stature of specific risk officers within the organization) and the bank’s system of compensation and incentives (including the business lines). In addition, he suggested it might be time “to require large complex banks to establish clear lines of accountability that make it possible to hold senior executives responsible for serious compliance breakdowns that lead to BSA program violations” as they would for senior executives responsible for other activities or lines of business.

Enterprise & Consumer Compliance

CFPB Seeks Public Comment on Model Disclosure Forms for Prepaid Cards

In a March 18, 2014 blog post, the Consumer Financial Protection Bureau (CFPB) announced that it is developing a model disclosure form to standardize the disclosures for prepaid cards. The post included two model form designs for which the CFPB is requesting comment from the public. When comparing the model forms, the CFPB specifically asks commenters to consider these questions:

- Do you understand how much each of these cards will cost to use?
- What would you like to see added or changed? Is there some way to make the information clearer?
- Is there anything you find confusing?

The CFPB expects to complete testing of the forms in April. The new disclosures are part of a larger project that the CFPB states will provide a variety of protections for prepaid card users and for which they expect to propose a rule “later this spring.”

CFPB Issues Report to Congress on Fair Debt Collection Practices Act

The Consumer Financial Protection Bureau (CFPB or Bureau) released its third annual report to Congress on its activities to administer the *Fair Debt Collection Practices Act* (FDCPA).

The report highlights the CFPB's:

- Acceptance of consumer complaints related to debt collection activities, which began in July 2013 and totaled more than 30,000 between July and December 2013.
- Release of an Advanced Notice of Proposed Rulemaking (ANPR) in November 2013 to collect information on issues, including the accuracy of information used by debt collectors, consumers' knowledge of their rights, and the communication methods collectors employ to recover debts.
- Distribution of sample letters that can be used by consumers in their dealings with debt collectors, as well as the CFPB's enforcement actions taken against debt collectors.
- Supervision of the larger participants of the debt collection market, including those firms with more than \$10 million in annual receipts from consumer debt collection activities, which began January 2, 2013.

President Signs Flood Insurance Reform Bill

President Obama signed H.R. 3370, the *Homeowner Flood Insurance Affordability Act*, into law on March 21, 2014. The bill had previously passed the U.S. Senate on March 13, 2014 and the House of Representatives on March 4, 2014.

The bill reverses some of the changes to the National Flood Insurance Program (NFIP) introduced by the *Biggert-Waters Flood Insurance Reform Act of 2012*. Features of H.R. 3370 provide, among other things:

- A limit on the annual average rate increase for a class of properties and a limit on the annual rate of increase for individual policies;
- Repeal of the property sales trigger;
- Repeal of the new policy sales trigger; and
- Reinstatement of the grandfathering provisions.

In addition, the law provides:

- A delay of the escrow requirements until January 1, 2016;
- Only residential mortgage loans that are originated, refinanced, increased, extended, or renewed on or after January 1, 2016 would be subject to the law; and
- Exclusions from the escrow requirement for certain loans including: home equity lines of credit; nonperforming loans; loans with a term no longer than 12 months; and certain loans secured by property that is secured by condominium, cooperative, or other project development.

Capital Markets & Investment Management

SEC and FINRA to Hold Broker-Dealer Regional Compliance Outreach Programs

On March 18, 2014, the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA) announced the opening of registration for the regional compliance outreach programs for broker-dealers that will take place in Denver, Los Angeles, Chicago, Miami, Philadelphia, and New York, beginning in the spring.

The SEC's Office of Compliance Inspections and Examinations, in coordination with the SEC's Division of Trading and Markets, is partnering with FINRA to sponsor the programs. Similar to the 2013 national compliance outreach program for broker-dealers, the regional programs will provide professionals at broker-dealers with a forum for discussions with regulators about risk management, regulatory issues, and compliance practices.

CFTC Requests Public Comment on Swap Data Reporting Rules

On March 19, 2014, the Commodity Futures Trading Commission (CFTC) approved for publication in the *Federal Register* a request for public comment on the CFTC's swap data recordkeeping and reporting requirements under Part 45 and related provisions. Part 45 requires reporting counterparties and reporting entities to submit swap transaction data to swap data repositories via electronic reporting to enable the CFTC to perform a range of market integrity, risk monitoring, and other supervisory functions. The request for comment was developed by the Interdivisional Working Group (IDWG) formed by the CFTC on January 21, 2014, to review the swap data reporting rules and make recommendations for resolving reporting challenges.

The request for comment seeks public input on approximately seventy questions addressing such topics as the reporting of primary economic terms, confirmation and continuation data; the manner in which the reporting rules address different transaction types, business models, and data flows present in swaps markets; the reporting of cleared swaps; and data harmonization. Comments received will inform the CFTC's ongoing efforts to improve swap transaction data quality and determine whether and how the swap data reporting rules should be enhanced to ensure effective reporting.

The comment period will be open for 60 days from the date of publication of the request for comment in the *Federal Register*. IDWG members will review all comments received and make recommendations to the CFTC by the end of July.

CFTC Issues No-Action Letter Regarding the De Minimis Threshold for Swaps with Utility Special Entities

The Commodity Futures Trading Commission's (CFTC) Division of Swap Dealer and Intermediary Oversight (DSIO) issued a letter on March 21, 2014, providing no-action relief from certain requirements in the de minimis exception from the definition of the term "swap dealer." The no-action relief allows an entity to deal in utility operations-related swaps, as that term is defined in the letter, and not be required to register as a swap dealer, provided that the aggregate gross notional amount of swap dealing activity does not exceed \$8 billion per year.

The letter issued by the DSIO provides temporary no-action relief while the CFTC considers the issues that were raised in a petition it received requesting relief for certain swaps that utility special entities rely upon to hedge risks arising from their electric or natural gas operations or obligations. The no-action letter supersedes a 2012 no-action letter issued by the DSIO (CFTC Letter No. 12-18).

CFTC Provides Extension of Temporary No-Action Relief for Certain Swaps

On March 21, 2014, the Commodity Futures Trading Commission's (CFTC) Division of Market Oversight (DMO) announced the issuance of a no-action letter extending time limited relief for (1) Multilateral Trading Facilities overseen by competent authorities designated by European Union Member States (MTFs) from the swap execution facility (SEF) registration requirement set out in section 5h(a)(1) of the *Commodity Exchange Act* (CEA) and CFTC regulation 37.3(a)(1); and (2) parties executing swap transactions on or pursuant to the rules of MTFs from the trade execution mandate set out in section 2(h)(8) of the CEA.

The DMO and the CFTC's Division of Swap Dealer and Intermediary Oversight (DSIO) state that they intend to issue "in the near future" a no-action letter providing conditional, long-term relief for MTFs that, upon publication by the CFTC, will supersede CFTC No-Action Letter No. 14-16 (Replacement Long-Term No-Action Letter). The conditional relief that will be provided in the Replacement Long-Term No-Action Letter will generally track the conditional relief provided in CFTC No-Action Letter No. 14-16 in both substance and process, but will contain several notable clarifications and amended conditions for qualifying for such conditional relief.

The DMO is providing this additional period of time to allow MTFs and parties executing swap transactions on or pursuant to the rules of MTFs to consider the clarifications and amended conditions that will be featured in the Replacement Long-Term No-Action Letter once it is published by the CFTC.

Enforcement Actions

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

- The SEC charged a stockbroker and a managing clerk at a law firm with insider trading around more than a dozen mergers or other corporate transactions for illicit profits of \$5.6 million during a four-year period, in violation of Sections 10(b) and 14(e) of the *Securities Exchange Act of 1934* and Rules 10b-5 and 14e-3 as well as Section 17(a) of the *Securities Act of 1933*. The complaint seeks a final judgment ordering the individuals to pay disgorgement of their ill-gotten gains plus prejudgment interest and penalties, and

permanent injunctions from future violations of these provisions of the federal securities laws.

- FINRA and BATS Exchange, Inc. announced that they have jointly ordered a U.S.-based financial investment advisory firm to pay approximately \$1.1 million in connection with short selling ahead of participating in five public offerings of securities, in violation of Rule 105 of Regulation M under the *Securities Exchange Act of 1934*. Rule 105 generally prohibits buying securities in secondary offerings when the purchaser sold short the security that is the subject of the offering during a specific restricted period, typically five business days, before the secondary offering is priced. The payments include the disgorgement of more than \$538,000, plus interest, of profits and improper financial benefits, and approximately \$559,000 in fines. The financial investment advisory firm also violated supervisory requirements related to Rule 105, and as part of the sanction, it was ordered to update its written supervisory procedures for Rule 105 compliance.
- The CFTC ordered an individual to pay a \$250,000 civil monetary penalty for making false and misleading statements of material fact, and omitting material facts, to CFTC staff during a CFTC Division of Enforcement (DOE) investigation. The Order enforces the false statements provision of the *Commodity Exchange Act* (CEA). In addition to the \$250,000 civil monetary penalty, the Order requires the individual to cease and desist from violating the relevant provision of the CEA and permanently prohibits him from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity.
- The CFTC charged two South Carolina-based individuals with fraudulently soliciting and/or accepting at least \$3.2 million from commodity pool participants in connection with their operation of a commodity pool from August 2008 to the present. The CFTC complaint also charges the individuals with misappropriating pool participant funds and failing to register with the CFTC as Commodity Pool Operators in connection with their operation of the pool. In addition, the complaint charges one individual with improper operation of the pool.
- The CFTC charged an Ohio-based former senior commodities analyst of a commodity brokerage firm registered with the CFTC as an Introducing Broker with commodity futures fraud. The CFTC complaint alleges that the analyst engaged in unauthorized trading for two customers' accounts, made material misrepresentations and omissions in connection with his unauthorized trading, and falsified the firm's internal trading documents and a customer's account statements to conceal his unauthorized trading.
- The CFTC filed a civil injunctive enforcement action against a gold distribution firm and its sole owner. The CFTC complaint charges the defendants with engaging in illegal, off-exchange financed transactions in precious metals with retail customers.
- The CFTC filed an enforcement action against an individual, charging him with solicitation fraud, misappropriation of customer funds, and registration violations in connection with operating a fraudulent commodity pool scheme. According to the CFTC complaint, the defendant fraudulently solicited at least \$1,146,000 from at least 43 pool participants to participate in pooled investment vehicles to trade in off-exchange agreements, contracts, or transactions in foreign currency on a leveraged or margined basis.
- The CFTC announced that a judge in the U.S. District Court for the Northern District of Ohio granted summary judgment and issued a Memorandum Opinion, a Judgment Entry, and a permanent injunction Order (collectively, the Order) against a Canadian company and an individual in a CFTC enforcement action and finds that the defendants committed fraud in connection with a multi-million dollar off-exchange foreign currency Ponzi scheme. The court's Order imposes disgorgement of \$1,146,399 and also requires the defendants to pay civil monetary penalties of \$1,146,399. The Order further imposes permanent trading and registration bans on the defendants, and prohibits them from violating the anti-fraud provisions of the CEA.

Recent Supervisory Actions against Financial Institutions

Last Updated: March 21, 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 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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