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Bank & Thrift

Basel Committee Appoints New Secretary General

The Bank for International Settlements' Basel Committee on Banking Supervision (Basel Committee) announced on April 23, 2014, that it had appointed William Coen as its next Secretary General. He will serve for an initial term of three years, beginning in mid-June, and will also serve as the chairman of the Basel Committee's Policy Development Group. The Basel Committee summarizes that Mr. Coen has been with the Bank for International Settlements for 15 years, serving as the Basel Committee's Deputy Secretary General for the past seven years. In total he has nearly 30 years of banking and regulatory experience, including holding various positions with the Federal Reserve Board.

OCC Reports Financial Highlights for Its Southern District

On April 22, 2014, the Office of the Comptroller of the Currency (OCC) reported financial highlights specific to the nine states that make up the agency's Southern District. In particular, the OCC reported that community national banks and federal savings associations (FSAs) located in these states - Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas – had experienced a doubling of the average loan growth between 2012 and 2013, reaching 4 percent in 2013. The OCC added that certain areas had experienced higher average loan rates, including an average loan growth of as much as 11 percent in Texas and Oklahoma (attributable to activity in the oil and gas industry) and average loan growth rates of 6 percent to 7 percent experienced in some areas of Florida (attributable by the OCC to "retiree migration, good weather, a low-tax environment, and higher employment in hospitality and retail trade").

Additional highlights for the district indicate: average return on assets increased slightly; capital levels are "satisfactory overall," and asset quality has improved. Credit risk, however, remains a concern in Alabama, Arkansas, Florida, Georgia, Mississippi and Tennessee.

The OCC also reported that 86 percent of the 490 banks and thrifts located in the nine states of the Southern District had a composite rating of 1 or 2 at the end of 2013. The composite ratings are a major indication of financial health of a bank and run on a scale of 1-to-5 with 1 being the healthiest.

OCC Offers Additional Guidance into Information Security Vulnerability in OpenSSL

On April 25, 2014, the Office of the Comptroller of the Currency (OCC) released Bulletin 2014-17 to alert national banks and federal savings association to updated information on the previously identified information security vulnerability in OpenSSL, an encryption tool. The OCC and other members of the Federal Financial Institutions Examination Council (FFIEC) first released an alert on this vulnerability, referred to as Heartbleed, on April 10, 2014. The alert outlined the risks associated with this vulnerability and the risk mitigation steps that financial institutions should take to address those risks. The FFIEC instructed financial institutions to

incorporate patches on systems and services, applications, and appliances using OpenSSL and to upgrade systems as soon as possible to address the vulnerability. It further advised financial institutions relying upon third-party service providers to ensure those providers are aware of the vulnerability and are taking appropriate mitigation action.

The OCC reports that since the release of the alert, new information indicates the vulnerability may affect a range of technologies including, but not limited to, internally and externally facing servers, network devices, printers, applications, and mobile devices. Given the evolving information about the scope and nature of this vulnerability, the OCC encourages the institutions under its supervision to remain vigilant and continue their ongoing risk assessments and monitoring to detect and prevent against unauthorized access to customer information.

The members of the FFIEC include the Federal Reserve Board, the Federal Deposit Insurance Corporation; the National Credit Union Administration; the OCC; the Consumer Financial Protection Bureau; and the State Liaison Committee.

FDIC Announces Executive Leadership Webinar on Cybersecurity

In an April 25, 2014 Financial Institution Letter, the Federal Deposit Insurance Corporation (FDIC) announced that the Federal Financial Institutions Examination Council (FFIEC) will host a webinar entitled *Executive Leadership of Cybersecurity: What Today's CEO Needs to Know About the Threats They Don't See* on May 7, 2014. The FDIC states the material is applicable to all FDIC-supervised institutions and participation by financial institution executive management is strongly encouraged. Registration details are available on the FDIC Web site.

The webinar is designed to:

- Be a plain language presentation for senior management of institutions on current cyber threats and actions that can be taken to protect their customers and institutions;
- Provide key takeaways to assist in promoting an appropriate tone from senior management on topics that include building a security culture, integrating cybersecurity into the business units, and engaging boards of directors; and
- Highlight the importance of public/private partnerships, such as the Financial Services Information Sharing and Analysis Center (FS-ISAC).

Enterprise & Consumer Compliance

CFPB Publishes Mortgage Closings Report and Announces eClosings Pilot Project

On April 22, 2014, the Consumer Financial Protection Bureau (CFPB) published a report, *Mortgage Closings Today*, which contains findings from a study intended to identify challenges (and their root causes) in the mortgage closing process as well as potential solutions. The report finds that many consumers are frustrated by the short amount of time they have to

review closing documents, which can be voluminous and complex. In particular, the report identifies three main challenges during the closing process:

- Not enough time to review: Borrowers reported they frequently do not see the closing documents until they attend the closing meeting and reported feeling pressure to rush through the paperwork and sign—even when they did not understand the terms.
- Overwhelming stacks of paperwork: The paperwork is voluminous. However, it fulfills a variety of needs, including forms that are: intended to help consumers better understand the costs and risks of their mortgages; needed to meet lenders' risk requirements; and designed to fulfill federal, state, and local government requirements.
- Document complexity and errors: Most closing documents are comprised of legal and technical terms and acronyms that are generally unknown to most consumers, who complained that they had little help from the others to understand them. Consumers also noted that errors in the closing documents often led to delays in finalizing the process.

In the report, Director Cordray stated, "Based on this initial research, we believe that there may be opportunities to leverage technology in order to solve some of the issues that cause frustrations for both consumers and professionals in the mortgage closing process. Specifically, we hypothesize that technology-enabled electronic closing (eClosing) solutions have the potential to reduce errors, limit surprises, lessen anxiety, and create more time and opportunity for consumers to understand their mortgage and make more informed decisions."

To that end, the CFPB announced that it will launch an eClosing pilot project later this year. The project is intended to study whether eClosings can increase efficiency and consumer understanding. In particular, it is designed to "reflect the spirit of the Bureau's 'Know Before You Owe' rule" (a reference to the integrated mortgage disclosures rule) and to test features that could: enable consumer understanding; incentivize early reviews of the documents; and facilitate error identification. To participate in the pilot, lenders must submit a proposal to partner with a technology vendor that provides e-solutions. Lenders with an in-house eClosing solution that is similar to current vendor options will also be eligible to participate in the pilot. Participation guidelines and the program solicitation are available on the CFPB Web site.

CFPB Student Loan Ombudsman Report Focuses on Co-Signer Releases; CFPB Issues Related Consumer Advisory

The Consumer Financial Protection Bureau (CFPB) Student Loan Ombudsman released a mid-year report on April 22, 2014. The report analyzes more than 2,300 private student loan complaints and more than 1,300 debt collection complaints related to student loan debt that were submitted to the CFPB between October 1, 2013, and March 31, 2014.

In addition, the report specifically highlights co-signer issues identified in private student loan borrower complaints. The CFPB states these issues have routinely emerged in consumer complaints. They can be generally categorized as follows:

- *Auto-defaults when a co-signer dies:* Many private student loan contracts provide the lender with the option to immediately demand the full loan balance upon death of the co-signer, even when the loan is current.
- *Auto-defaults when a co-signer enters bankruptcy:* Even if the loan was in good standing prior to and while the co-signer is in bankruptcy, borrowers have submitted complaints detailing how they face auto-defaults, including consequences such as credit damage and frequent debt collection calls.
- *Obstacles to releasing co-signers from the loan:* Borrowers report they have experienced "bureaucratic barriers" when seeking to release their co-signer. Consumers complain that

the co-signer release process is “rigid and opaque” making the process mysterious.

The CFPB estimates that 90 percent of private student loans have a co-signer. The ombudsman suggests “the practice of accelerating a loan and immediately demanding full payment upon the death or bankruptcy of a co-signer on a loan that is otherwise performing warrants review by senior management and investors.” He further suggests that before putting a borrower into immediate default, private student lenders first determine whether the borrower qualifies for a co-signer release, stating this would maintain loan repayment on the original terms. If the co-signer cannot be released from the loan, the ombudsman suggests that lenders honor the existing payment schedule for a designated time period so that borrowers can identify a new co-signer or refinance the loan.

Coincident with the release of the report, the CFPB issued a Consumer Advisory that contains sample letters for borrowers and co-signers to request information on how to obtain a co-signer release from the student loan servicer. Separately, the ombudsman suggests that management closely review consumer complaints related to co-signer issues to ensure they are providing clear and accurate information about co-signer releases and other benefits.

House Subcommittee on Oversight and Investigations Intends to Subpoena Testimony of CFPB Employees

The House Committee on Financial Services’ Subcommittee on Oversight and Investigations announced that it will hold a business meeting on April 29, 2014, to authorize the issuance of subpoenas compelling the testimony of two employees of the Consumer Financial Protection Bureau (CFPB or Bureau) and an executive of the National Treasury Employees Union (NTEU) at an upcoming hearing. The three individuals were previously invited by the subcommittee to testify on behalf of the CFPB at an April 2 hearing though the CFPB and the NTEU reportedly refused to make them available to testify. The current announcement is part of the subcommittee’s ongoing investigation into allegations of discrimination and retaliation at the Bureau.

Capital Markets & Investment Management

FINRA Approves Rule Amendment to Expand Background Checks on Registration Applicants

On April 24, 2014, the Financial Industry Regulatory Authority (FINRA) announced that its Board of Governors approved amendments to FINRA's supervision rule that would expand the obligations of firms to perform background checks on applicants for registration. These reviews would verify that the information contained in an applicant's Form U4, such as criminal and bankruptcy records, civil litigations, judgments, and liens, is properly reported. Form U4 is the Uniform Application for Securities Industry Registration or Transfer used by FINRA, other self-regulatory organizations (SROs), and states to elicit employment background, disciplinary, and other information to register individuals with the appropriate

SROs and jurisdictions. Under the amended rule, firms would be required to check the backgrounds of both first-time applications and transfers, and adopt written procedures that include searching public records.

FINRA announced that it plans to perform an initial search of public financial records for all registered representatives. Additionally, FINRA will conduct a search of publicly available criminal records for all registered individuals who have not been fingerprinted within the last five years. FINRA also announced that it will conduct periodic reviews of public records to ascertain the accuracy and completeness of the information available to investors, regulators, and firms. FINRA states that these efforts will better position it to assess firm and registered individual compliance with reporting requirements. Lastly, FINRA is considering whether additional data, such as failed examinations, from the CRD system used by regulators should be included in BrokerCheck and has initiated a study to examine whether a relationship exists between these data and broker misconduct.

The amendments to the supervision rule will be submitted to the Securities and Exchange Commission for review and approval.

CFTC Issues Time-Limited No-Action Letter for Certain Commodity Trading Advisors Regarding Oral Recording Requirements

On April 25, 2014, the Commodity Futures Trading Commission's (CFTC) Division of Swap Dealer and Intermediary Oversight and Division of Market Oversight issued a time-limited no-action letter providing relief to commodity trading advisors that are members of designated contract markets or swap execution facilities. The relief covers the oral recording requirement set forth in Commission Regulation 1.35(a), in connection with the execution of swaps. The letter extends no-action relief that previously was granted by CFTC Letter Nos. 13-77 and 14-33 and will expire on December 31, 2014.

Enforcement Actions

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

- FINRA issued a decision finding that a San Francisco-based brokerage firm violated FINRA rules by attempting to keep investors from participating in judicial class actions by adding waiver language to its customer account agreements. The firm agreed to pay a $500,000 fine and notify all of its customers that it had withdrawn the waiver language from its customer account agreements, fully resolving the matter.
- The SEC announced charges against a former biopharmaceutical company executive and two others for insider trading on confidential information about the company's key developmental drug. The settlement, which is subject to court approval, would enjoin the defendants from further violations of the federal securities laws and require the executive to pay a civil penalty of approximately $64,000 and bar the individual from serving as an officer or director of a public company for five years. The settlement also requires one of the other defendants to return $64,300 of allegedly ill-gotten gains, plus prejudgment interest of $9,556, and pay a civil penalty of $64,300. The settlement requires the other defendant to return $75,140 of allegedly ill-gotten gains, plus prejudgment interest of $10,955, and pay a civil penalty of $37,570.

- The SEC filed insider trading charges against a former accounting manager who provided a friend with confidential company information that set in motion a chain of tipping and illegal trading among a network of hedge fund traders who reaped approximately $16.5 million in illicit gains. The defendant has agreed to pay a $30,000 penalty and be barred from serving as an officer or director of a public company for five years.
- The SEC filed fraud charges against a former Florida-based stock promoter currently serving a two-year prison sentence for lying to SEC investigators, alleging that the defendant defrauded investors in a Florida real estate venture, sold unregistered securities, and acted as an unregistered broker-dealer. The SEC is seeking the return of allegedly ill-gotten gains with interest, a monetary penalty, and a permanent injunction against the defendant.
- The SEC issued a stop order to prevent a Northern California-based company from issuing stock after including false and misleading information regarding disclosures and earned revenue in its amended registration statement for an initial public offering (IPO). Stop orders 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 under that registration statement until the company has corrected the deficiencies or misleading information.
- The SEC charged a former executive with insider trading in advance of the acquisition of the e-commerce company where the defendant worked by providing two friends and two relatives with confidential information about the pending deal so they could attain more than $300,000 in illegal profits. The defendant agreed to an officer-and-director bar and must pay $664,822. The traders and an individual who entered into a non-prosecution agreement will pay a combined total of more than $490,000 in their settlements, which range from disgorgement-only or reduced penalties for cooperators to penalties of two or three times the trading profits for other traders.
- The CFTC announced the issuance of a Consent Order of Permanent Injunction barring an Australian financial services firm from soliciting orders to trade foreign currency (forex) from U.S. residents who do not qualify as eligible contract participants (ECPs) and from offering to be the counterparty to U.S residents' forex transactions without registering with the CFTC. The Order requires the firm to publish a notice on its Web site stating that it does not provide services for U.S. residents and settles CFTC charges that the firm unlawfully solicited members of the public to engage in forex transactions and operated as a Retail Foreign Exchange Dealer (RFED) without being registered with the CFTC.

Recent Supervisory Actions against Financial Institutions

Last Updated: April 25, 2014

Agency	Institution Type	Action	Date	Synopsis of Action
Federal Reserve Board	State member bank	Civil Money Penalty	04/15	The Federal Reserve Board issued an Order of Assessment of Civil Money Penalty against a Wyoming-based state member bank to address violations of the National Flood Insurance Act.
Federal Reserve Board	State member bank	Prompt Corrective Action Directive	04/10	The Federal Reserve Board issued a Prompt Corrective Action Directive against a Maryland-based state member bank to address its failure to maintain adequate capital reserves. The state member bank was found to be significantly undercapitalized.
CFPB	Mortgage lender	Notice of Charges	01/29	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	01/16	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	01/07	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.
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.

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