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Bank & Thrift

OCC Proposes Increase in Assessments for National Banks and Federal Savings Associations with Total Assets of More Than $40 Billion

On April 28, 2014, the Office of the Comptroller of the Currency (OCC) issued a notice of proposed rulemaking (NPR) that would raise assessments on national banks and federal savings associations (FSAs) with total assets over $40 billion. Under the proposal, marginal assessment rates would increase by 14.5 percent and would be effective for the assessment due on September 30, 2014. Comments on the NPR are requested by June 12, 2014.

The OCC estimates the actual projected assessment increases for individual institutions would range between 0.32 percent and 14 percent, depending on an institution's total assets reflected in its June 30, 2014, Consolidated Report of Condition and Income (Call Report). The average increase in assessments for affected banks and FSAs is projected to be 12 percent.

The OCC states the base assessment for banks and FSAs is calculated using a table with 11 categories, or brackets, each of which comprises a range of asset-size values. The assessment for each bank and FSA is the sum of a base amount, which is the same for every national bank and FSA in its asset-size bracket, plus a marginal amount, which is computed by applying a marginal assessment rate to the amount in excess of the lower boundary of the asset-size bracket. The marginal assessment rate declines as asset size increases, reflecting economies of scale in bank examination and supervision.

In conjunction with the proposed increase in assessments, the OCC is also proposing to update its assessment rules to conform with Section 318 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the Dodd-Frank Act), which reaffirmed the authority of the Comptroller of the Currency to set the amount of, and methodology for, assessments. The proposed rule would also revise the assessment rules to update references to the annual notice of Comptroller of the Currency fees. If adopted as final, the OCC will implement the increase in assessments by issuing an amended Notice of Fees, which would become effective as of the semiannual assessment due on September 30, 2014.

Federal Reserve Requires Banking Organization to Resubmit Its Capital Plan Under CCAR Following Data Error Disclosures

On April 28, 2014, the Federal Reserve Board (Federal Reserve) announced it is requiring one of the participants in the Federal Reserve's 2014 Comprehensive Capital Analysis and Review (CCAR) program to resubmit its capital plan and suspend planned increases in capital distributions following the banking organization's disclosure that it incorrectly reported data that was used in the calculation of regulatory capital ratios and submitted as inputs for the most recent stress tests under the annual CCAR exercise. The banking organization will not be able to increase its capital distributions, including those increases previously approved during the 2014 CCAR exercise (completed last month) until it receives notice that the Federal Reserve has not objected to the new capital plan.

The Federal Reserve can require a banking organization that is part of the CCAR program to resubmit its capital plan at any time if there is a material change that could potentially lead to an alteration in the firm's capital position. The banking organization must address the quantitative errors in its regulatory capital calculations as part of the resubmission and must undertake a review of its regulatory capital reporting to help ensure there are no further errors.

OCC Schedules Workshop for Community Bank Directors

The Office of the Comptroller of the Currency (OCC) announced that it will host a three-day workshop in Nashville, Tennessee between June 2 and June 4. The workshop is intended for directors of national community banks and federal savings associations and is entitled, "*Mastering the Basics: A Director's Challenge*." It provides information on the roles and responsibilities of a community bank director and includes topics such as directors' duties and core responsibilities, the regulatory environment, board reports, and bank ratings. The OCC summarizes the workshop will review "the most important laws and risk management systems that an institution must have in place to operate in a safe and sound manner." More information is available on the OCC Web site.

Senate Banking Committee Confirms Key Nominees

On April 29, 2014, the Senate Committee on Banking, Housing, and Urban Affairs approved of six nominations, including:

- Dr. Stanley Fischer as a member and vice chairman of the Board of Governors of the Federal Reserve System;
- The Honorable Jerome H. Powell as a member of the Board of Governors of the Federal Reserve System;
- The Honorable Lael Brainard as a member of the Board of Governors of the Federal Reserve System;
- Ms. Nani Coloretti as deputy secretary of the U.S. Department of Housing and Urban Development;
- Mr. Gustavo Velasquez Aguilar as assistant secretary of the U.S. Department of Housing and Urban Development; and
- Mr. J. Mark McWatters as a member of the National Credit Union Administration Board.

Enterprise & Consumer Compliance

CFPB Proposes Modifications to Certain Qualified Mortgage and Mortgage Servicing Rules

The Consumer Financial Protection Bureau (CFPB or Bureau) announced, on April 30, 2014, proposed revisions to its mortgage rules that would modify the regulatory provisions and the official interpretations relating to the ability-to-repay/qualified mortgage requirements and servicing rules, among other things. More specifically, the proposed revisions would:

- Provide an alternative definition of "small servicer" that would apply to certain nonprofit

entities that service loans, for a fee, on behalf of other chapters of the same organization. This alternative definition would permit certain 501(c)(3) nonprofit organizations to consolidate servicing activities while maintaining the "small servicer exemption." (This would affect Regulations Z and X.)

- Amend the Regulation Z ability-to-repay requirements to provide that certain interest-free, contingent subordinate liens originated by nonprofit creditors would be excluded from the 200-loan credit extension limit applicable to the nonprofit exemption from the ability-to-repay requirements.
- Provide a limited, post-consummation cure mechanism for loans that are originated with the good faith expectation of qualified mortgage status but that actually exceed the points and fees limit for qualified mortgages. The proposed cure would permit the creditor or an assignee to refund the amount of the excess up to 120 days after consummation of the loan, and would also require the creditor or assignee to maintain and follow policies and procedures for post-consummation reviews of loans and for providing refunds to consumers for amounts in excess of the points and fees limit.

The CFPB is also seeking comment on:

- Whether and how to provide a post-consummation cure for loans that that are originated with the good faith expectation of qualified mortgage status but that actually exceed the 43-percent debt-to-income ratio limit that applies to certain qualified mortgages.
- Information on the experience of entities that qualify as small creditors following implementation of the January 2013 mortgage rules, including the effect of the rules on the creditors' mix of loans originated, challenges related to the transition from balloon-payment loans to adjustable rate mortgages, and whether the 500 total first-lien originations limit is sufficient for the purposes of the small creditor provisions.

As proposed, the rule changes would become effective 30 days after publication in the *Federal Register*.

OCC Report Highlights Status of Independent Foreclosure Review Payment Agreement; GAO Issues Report on Foreclosure Review

On April 30, 2014, the Office of the Comptroller of the Currency (OCC) released a status report on the Independent Foreclosure Review (IFR) Payment Agreements (Agreements), which were completed in 2013 when the OCC and the Federal Reserve Board (Federal Reserve) issued amendments to the 2011 consent orders they had with many large mortgage servicers related to mortgage loan servicing and foreclosure processing. The amendments effectively ended requirements for these servicers to have an independent review of the files of their borrowers who were in the process of foreclosure at any time in 2009 and 2010 as required by the consent orders. In total, the Agreements required the mortgage servicers to provide $3.9 billion in payments to 4.4 million eligible borrowers and $6.1 billion in other loss mitigation and foreclosure prevention assistance.

Because servicers entered Agreements at different times, four separate settlement funds were created. The OCC's report focuses on one of these funds, Qualified Settlement Fund 1, which includes payments from 11 large institutions, including one regulated by the Federal Reserve. The OCC reports that as of January 24, 2014, Qualified Settlement Fund 1 had disbursed nearly 4 million checks, 83 percent of which had been cashed or deposited as of April 8, 2014. The OCC notes that payments to eligible borrowers have also been made from all but one of the other settlement funds.

With regard to the requirement to provide nearly $6.1 million in other loss mitigation and foreclosure prevention assistance, the OCC's report notes that six institutions have met their obligations and seven others have submitted foreclosure prevention assistance activities for credit under the amended consent orders on more than 16,000 mortgages. The OCC further states that the report data reflect the servicers' submissions, though the regulators have not validated submissions nor have they awarded credit toward the obligations under the amended consent orders.

In a separate but related development, the Government Accountability Office (GAO) released a report on April 29, 2014, that presents the findings of its review of the amended consent order process, which addressed:

- Factors considered during cash payment negotiations between regulators and servicers and regulators' goals for the payments;
- The objectives of foreclosure prevention actions and how well regulators designed and are overseeing those actions to achieve objectives; and
- Regulators' actions to share information from the file review and amended consent order processes and the transparency of those processes.

For each of these considerations, the GAO found:

- The final negotiated amount (approximately $3.9 billion) generally fell within a reasonable range and regulators generally met their goals for timeliness and amount of the cash payments.
- The regulators did not define specific objectives for the $6.1 billion in foreclosure prevention actions but rather negotiated with servicers and identified broad principles for them to follow (i.e., "Actions should be meaningful and borrowers should be kept in their homes"). The OCC and Federal Reserve are verifying servicers' foreclosure prevention policies though they are not testing policy implementation. The GAO recommends that examination teams take steps to evaluate and test servicers' implementation of the foreclosure prevention principles.
- The regulators are sharing information from the file reviews and amended consent orders among the supervisory staff and examination teams. However, public information provides limited information on the processes and payments. The GAO states that "in the absence of information on the processes, regulators face risks to public confidence in the mortgage market, the restoration of which was one of the goals of the file review process." The GAO recommends forthcoming reports or other public documents include information on the processes used to determine cash payment amounts.

CFPB Issues Fair Lending Report to Congress; Director Cordray Announces Support for Bank's Auto Dealer Policy

The Consumer Financial Protection Bureau (CFPB) released its *Fair Lending Report* on April 30, 2014. The report highlights the CFPB's progress in its fair lending work since the release of its last report in December 2012. The current report covers the period July 21, 2012 to December 31, 2013. Among the key developments identified in the report, the CFPB states that it has:

- Increased efficiencies in fair lending activity, including implementing a risk-based fair lending prioritization process to focus its supervisory and enforcement work. The prioritization approach uses quantitative and qualitative data to assess fair lending risk;
- Identified mortgage lending and auto finance as key priorities in the supervision and enforcement work;
- Provided guidance on supervisory reviews, including releasing information on the methods used to conduct three types of fair lending reviews (*Equal Credit Opportunity Ac*t (ECOA)

Baseline Reviews, ECOA Targeted Reviews, and *Home Mortgage Disclosure Act* (HMDA) Data Integrity Reviews); and
- Continued to initiate and encourage outreach opportunities to industry and consumers to discuss fair lending compliance and education.

In an accompanying blog post, Patrice Ficklin, the CFPB's Director of Fair Lending and Equal Opportunity, outlined "recent enforcement actions taken by the CFPB to address violations of the ECOA and/or HMDA, including actions against:
- Two mortgage lenders for "significant errors" in their mortgage loan application data;
- A credit card company for several violations of consumer protection laws, including unlawfully discriminating against card applicants on the basis of age;
- A mortgage lender for charging higher prices on mortgage loans to certain groups of borrowers compared to other similarly creditworthy borrowers; and
- An indirect auto lender for harming certain groups of borrowers who were charged higher interest rates than similarly creditworthy borrowers.

She also noted the CFPB had released two fair lending bulletins to help consumers and industry stakeholders recognize fair lending and access to credit risks in the home mortgage and auto lending markets.

Separately, CFPB Director Cordray released a statement in favor of a bank's public announcement that it will now pay auto dealers a flat percentage of the loan amount as compensation for originating indirect auto loans. In 2013, the Bureau had released Bulletin 2013-02, which explained that policies that allow dealers to exercise discretion over interest rates and provide direct financial incentives for charging higher prices may lead to fair lending violations under the ECOA. It stated that policies with these features can create significant risk of illegal price disparities based on factors like race, gender, or national origin. The CFPB does not mandate any specific form of dealer pricing and compensation, and has indicated that lenders may choose to adopt a variety of means, including non-discretionary pricing and compensation policies, among others. Director Cordray stated the bank's announcement was a proactive step in protecting consumers from discrimination.

Joint Forum Releases Final Report on Point of Sale Disclosures for Investment and Savings Products

The Bank for International Settlements' (BIS) Basel Committee on Banking Supervision (Basel Committee) released a final report on April 30, 2014 that identifies and assesses differences and gaps in regulatory approaches to point of sale (POS) disclosure for investment and savings products across the banking, insurance, and securities sectors. The report, *Point of Sale Disclosure in the Insurance, Banking and Securities Sectors*, considers whether these approaches should be further aligned across sectors and makes eight recommendations for policymakers and supervisors to consider when developing or modifying their POS disclosure regulations.

The Joint Forum members suggest that differences in disclosure requirements may contribute to the inability of consumers to "properly compare" products prior to purchase. The study looked at a sample of products that compete with "collective investment schemes" for consumers' investments or savings, including structured notes, structured deposits, unit-linked life insurance, variable annuities and indexed annuities. The recommendations follow.

1. Jurisdictions should consider implementing a concise written or electronic POS disclosure document for the product sample identified in the report, taking into account the

jurisdiction's regulatory regime.

2. The POS disclosure document should be provided to consumers free of charge, before the time of purchase.
3. A jurisdiction considering POS disclosure should consider requiring that a POS disclosure document disclose key characteristics including costs, risks, and financial benefits or other features of a given product and any underlying or referenced assets, investments, or indices, irrespective of the financial sector from which the products are derived.
4. The POS disclosure document should be clear, fair, not misleading and written in a plain language designed to be understandable by the consumer.
5. The POS disclosures should include the same type of information to facilitate comparison of competing products.
6. The POS disclosure document should be concise, set out key information about a product and may include, as appropriate, links or references to other information. It should make clear that it does not provide exhaustive information.
7. Allocation of responsibility for preparing, making available, and/or delivering the POS disclosure document should be clearly established, and the POS disclosure document should identify which entity is responsible for its content.
8. A jurisdiction considering POS disclosure should consider how to use its capabilities and powers to implement these POS recommendations, taking into account the jurisdiction's regulatory regime.

The study was undertaken by the Joint Forum, which is comprised of the Basel Committee, International Organization of Securities Commissions (IOSCO), and the International Association of Insurance Supervisors (IAIS). The full report is available on the BIS Web site.

Capital Markets & Investment Management

SEC Approves FINRA Rule Change to Limit Self-Trading

On May 2, 2014, the Financial Industry Regulatory Authority (FINRA) announced that the Securities and Exchange Commission (SEC) approved a FINRA rule change to limit self-trading. This change to FINRA Rule 5210 requires firms to have policies and procedures to review their trading activity for, and prevent, a pattern or practice of self-trades that result from orders originating from a single algorithm or trading desk or related algorithms or trading desks. An effective date for this change will be published in a future FINRA Regulatory Notice.

FINRA explains that self-trades are "transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in the beneficial ownership of the security. It adds "self-trades by single or related algorithms or trading desks may not reflect genuine trading interest, particularly if there is a pattern or practice of such trades."

CFTC Furthers Implementation of Trade Execution Mandate

On May 1, 2014, the Commodity Futures Trading Commission's (CFTC or Commission) Divisions of Market Oversight (DMO) and Clearing and Risk (DCR) announced further implementation of the trade execution requirement for certain interest rate and credit default swaps. Beginning May 16, 2014, market participants executing swaps subject to the trade execution requirement that are part of a "package transaction" must be traded on a Swap Execution Facility (SEF) or Designated Contract Market (DCM) according to a phased compliance timeline.

DMO previously provided no-action relief for certain swaps that otherwise were required to be traded on a SEF or DCM to the extent that those swaps were part of a package transaction. CFTC No-Action Letter No. 14-62 provides a phased compliance timeline for package transactions that include at least one swap that has been made available to trade and is therefore subject to the trade execution requirement. A complete list of the transactions subject to the Action Letter and the dates on which relief from the rule will end are available on the CFTC Web site.

FINRA Issues Revised Proposal to Hyperlink to BrokerCheck in Firms' Online Retail Web Sites and Communications

The Financial Industry Regulatory Authority (FINRA) issued a revised proposal on May 1, 2014, that includes changes made in response to comments on a prior proposal to amend FINRA Rule 2267 (Investor Education and Protection). As revised, the proposal would require a firm to include a readily apparent reference and hyperlink to BrokerCheck on each Web site of the firm that is available to retail investors. In addition, the rule would require a firm to include a readily apparent reference and hyperlink to BrokerCheck in online retail communications with the public when those communications include a professional profile of, or contact information for, an associated person, subject to specified conditions and exceptions such as electronic mail and text messages. Comments on the proposed rule must be received by June 16, 2014.

BrokerCheck is a free tool to help investors research the professional backgrounds of current and former FINRA-registered brokerage firms. The initial January 2013 proposal to amend FINRA Rule 2267 was intended to increase investor awareness and the use of BrokerCheck. It was withdrawn by FINRA because of operational issues raised in some of the 24 comment letters it received. The most common concerns involved the challenges of implementing the proposed rule change with respect to social media pages and the use of a "deep" link to BrokerCheck summary reports specific to each member firm or associated person. More information is available on FINRA's Web site.

Enforcement Actions

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

- The SEC obtained an asset freeze and the appointment of a receiver against a Utah-based retirement plan administrator that defrauded investors in self-directed Individual Retirement Accounts (IRAs), causing them to lose millions of dollars of savings. According to the complaint, the firm's founder, president and chief executive officer squandered more than $22 million of investor funds on high-risk investments. He hid the losses by issuing inflated account statements. The SEC seeks a permanent injunction as well as

disgorgement, prejudgment interest, and a civil penalty from the pension fund administrator and its founder.

- The SEC filed an application in U.S. District Court for the Eastern District of New York on April 29, 2014, against a broker-dealer company that allegedly violated an SEC Order requiring it to pay civil penalties of $4,350,000. The fines were imposed for violations of the antifraud provisions of the federal securities laws. According to the application, the limited liability corporation failed to make any payments by November 25, 2013, despite its consent to do so at a November 20, 2013 settled administrative proceeding.
- The SEC announced an enforcement action against a stock exchange and two related exchanges for their "failure to comply with the responsibilities of self-regulatory organizations (SROs) to conduct their business operations in accordance with Commission-approved exchange rules and the federal securities laws." The exchanges' affiliated routing broker was also charged. The exchanges agreed to settle the charges by retaining an independent consultant and paying a $4.5 million penalty.
- The CFTC announced that a New York U.S. District Court judge entered a restraining order freezing assets and prohibiting the destruction or concealment of books and records of a capital management company and officials of that company. The court's order arises out of a CFTC complaint charging the defendants with fraudulent solicitation of more than $2 million, misappropriation of most of those funds, issuing false account statements, and registration violations in an ongoing retail foreign currency fraud scheme.
- The CFTC obtained a federal court consent order against an accounting firm and its owner. The defendants must pay a $100,000 civil monetary penalty for violating CFTC regulations when conducting audits for a CFTC-registered Futures Commission Merchant (FCM). The order permanently prohibits the company and its owner from practicing or appearing before the CFTC. The Order stems from a CFTC Complaint that charged the firm and its owner with conducting year-end audits of an FCM in violation of Generally Accepted Auditing Standards (GAAS) and CFTC regulations and failing to report material inadequacies to the CFTC when required to do so.
- The CFTC announced that a U.S. District Court judge had entered a final judgment and consent Order for permanent injunction against an individual who has been registered with the CFTC as floor trader and as floor broker. The Order settles charges the individual exceeded speculative position limits in certain futures contracts on three separate days. The Order requires the individual to pay a civil monetary penalty of $130,000 and permanently prohibits him from violating speculative position limits of a registered entity, which have been either approved by the CFTC or certified by a registered entity.

Recent Supervisory Actions against Financial Institutions

Last Updated: May 2, 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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