KPMG
cutting through complexity

The Washington Report

for the week ended May 23, 2014

In This Issue

Safety & Soundness

FDIC Study Indicates Strong Performance and Ongoing Challenges for Rural Community Banks

The Federal Deposit Insurance Corporation (FDIC) published an early release edition of an article that is to be included in its upcoming *FDIC Quarterly*. The article discusses a study that looks at trends in rural depopulation in the United States and the implications of those trends for rural community banks. The article concludes that rural community banks, as a group, have tended to perform well despite the adverse effects of a declining population and customer base, though they are challenged to sustain growth and to attract qualified management.

The FDIC's study, *Long-Term Trends in Rural Depopulation and Their Implications for Community Banks*, states that rural depopulation is an accelerating trend that began a century ago, with more than one-third of U.S. rural counties having reached their maximum population before 1930. Over the 30-year period from 1980 to 2010, the study found:

- Nearly 700 rural counties in the U.S. lost population.
- Half of the rural counties experienced a decrease in population, compared with 12 percent of their counterparts in metro areas.
- The regions that experienced the most rapid depopulation were the Great Plains, where 86 percent of rural counties lost population, and the Corn Belt, where 59 percent of counties lost population. Rural counties in the Southern Mississippi Delta and Appalachia also experienced significant population declines.
- The eroding size of the local customer base makes it harder at the margin to raise deposits and attract loan customers.
- Financial performance, as measured by earnings and asset quality, was actually stronger in depopulating rural areas than in metro areas because the agricultural customer base of these banks was strong during and following the recession.
- Community banks that searched for deposit and loan growth by branching into metro areas were as adversely affected by the recession as were metro-based banks.
- In the years leading up to the financial crisis and recession, community banks in depopulating rural areas reported earnings and asset quality performance that was relatively similar to the performance of banks located in more economically vibrant areas.

OCC Proposes Rule to Integrate National Bank and Federal Savings Association Licensing Rules

On May 21, 2014, the Office of the Comptroller of the Currency (OCC) released Bulletin 2014-22 to announce that it had issued a Notice of Proposed Rulemaking (NPR) that would integrate the rules for national banks and federal savings associations relating to policies and procedures for corporate activities and transactions (licensing rules). The licensing rules include the OCC's rules on: articles of association, bylaws, and charters; chartering procedures; conversions; branching; operating subsidiaries; service corporations; business combinations; changes in capital; changes in asset size; capital distributions; changes of control; fiduciary powers; bank service companies; investments in premises; pass-through investments; main office and home office relocations; management interlocks of depository institutions; and voluntary liquidations.

The OCC expects the integration would generally create filing parity for national banks and federal savings associations for all activities and transactions addressed in its licensing rules. Comments will be accepted for a period of 60 days following publication in the *Federal Register*.

Federal Reserve Announces Action against Foreign Bank for Violations of Federal Banking Laws

The Federal Reserve Board (Federal Reserve) announced on May 19, 2014, that a foreign bank (Bank) with U.S. operations has agreed to pay a $100 million civil money penalty to address the agency's findings of unsafe and unsound banking practices and failure to comply with the federal banking laws. The Federal Reserve also issued a cease and desist order (Order), requiring the Bank to promptly address deficiencies in its oversight, management, and controls governing compliance with U.S. laws.

The Federal Reserve action was taken in conjunction with actions by the Department of Justice (DOJ) and the New York State Department of Financial Services to address findings of federal income tax law and various New York state law violations. In all, the penalties assessed by the agencies totalled $2.6 billion.

The Order requires the Bank to:

- Submit a written plan to the Federal Reserve that enhances management's oversight of the Bank's compliance with applicable U.S. laws.
- Operate its representative U.S. offices in compliance with the activity restrictions and not open a new representative office without the prior approval of the Federal Reserve.
- Submit quarterly written progress reports to the Federal Reserve detailing actions taken to comply with the Order and the results of those efforts.
- Terminate nine employees indicted for violations that resulted in the Order and not enter into any contract or other business relationship with those individuals or entities affiliated with them.
- Provide assistance to the DOJ and the Federal Reserve in their investigations of whether separate remedial or punitive actions should be taken against individuals who were involved in the conduct underlying the Order.

The Federal Reserve is continuing to investigate whether separate enforcement actions should be taken against individuals affiliated with the Bank who were involved in the conduct underlying the Order. These actions could include fines and orders prohibiting specific individuals from participating in the business of banking, including working for any institution subject to the jurisdiction of U.S. federal banking supervisors.

House Committee on Financial Services Passes Multiple Bills Aimed at Small Businesses and Community Banks

The House Committee on Financial Services passed 11 bills on May 22, 2014. The following is a brief description of each of those bills:

- H.R. 1779, the *Preserving Access to Manufactured Housing Act of 2012*, would amend section 1401 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) to clarify that a retailer of a manufactured home, or its employees, is not a "mortgage originator" for purposes of the *Truth in Lending Act* unless such person receives compensation from a lender, mortgage broker, or loan originator.
- H.R. 2673, the *Portfolio Lending and Mortgage Access Act*, would address the

requirements of Section 1411 of the Dodd-Frank Act and codify that community bankers who hold mortgages in portfolio have a vested interest in ensuring that their customers repay their mortgages.

- H.R. 3211, the *Mortgage Choice Act of 2013*, would modify the definition of "points and fees" for the purposes of determining whether a mortgage is eligible for treatment as a "Qualified Mortgage" under the Dodd-Frank Act.
- H.R. 4200, the *Small Business Investment Companies (SBICs) Advisers Relief Act*, would amend the *Investment Advisers Act of 1940* to reduce "unnecessary" regulatory costs and eliminate duplicative regulation of advisers to SBICs.
- H.R. 4466, the *Financial Regulatory Clarity Act of 2014*, would require federal banking regulators to assess whether newly proposed regulations or orders already exist and to address duplicative rules.
- H.R. 4521, the *Community Institution Mortgage Relief Act of 2014*, would address "unnecessary regulatory burdens" for community financial institutions from the CFPB's final rules implementing the Dodd-Frank Act provisions on escrow and mortgage servicing requirements.
- H.R. 4554, the *Restricted Securities Relief Act*, would streamline the process for reselling restricted securities to the public under a Securities and Exchange Commission (SEC) rule.
- H.R. 4565, the *Startup Capital Modernization Act of 2014*, would make it easier for issuers to take advantage of registration exemptions under SEC Regulation A.
- H.R. 4568, the *Small Business Freedom and Growth Act*, would simplify the SEC registration form for new securities offerings.
- H.R. 4569, the *Disclosure Modernization and Simplification Act*, would direct the SEC to simplify its disclosure regime for issuers and help investors more easily navigate public company disclosures.
- H.R. 4570, the *Private Placement Improvement Act*, would amend the federal securities laws to "ensure that small businesses do not face complicated and unnecessary regulatory burdens" when attempting to raise capital through private securities offerings issued under SEC Regulation D.
- H.R. 4571, the *Encouraging Employee Ownership Act of 2014*, would modernize SEC Rule 701, which permits private companies to reward employees with the companies' securities.

Enterprise & Consumer Compliance

CFPB Director Cordray Offers Remarks at the 2014 Boulder Summer Conference on Consumer Financial Decision Making

Consumer Financial Protection Bureau (CFPB or Bureau) Director Richard Cordray addressed the impact of rising student loan debt on borrowers as well as the impact of their debt load on the economy during a May 19, 2014, speech at the Boulder Summer Conference on Consumer Financial Decision Making. He said that today's $1.2 trillion of student loan debt is second only to mortgage debt as a category of consumer finance and that the individual student debt load

has increased by 70 percent in the last decade.

Director Cordray stated that comments the CFPB has received from the public indicate that the repayment of student loan debt impacts other spending choices such as, whether to buy a house, start a business, plan for retirement, start a family, or live in a small town. He said, "In combination, these hits are adding up to serious effects on the economy."

In response to issues raised by borrowers, Director Cordray said the Bureau is taking actions in the student loan servicing market, including:

- Accepting consumer complaints related to student loans;
- Implementing its supervisory authority to examine student loan servicers to assess them for compliance with the law and to impose remedial actions as necessary to address consumer harm;
- Working closely with other regulators to incentivize student loan servicers to provide more modification and refinancing options for private student loans; and
- Partnering with the Department of Education to create a *Financial Aid Shopping Sheet* that permits consumers to understand college costs before committing to an institution; and
- Creating a set of *Paying for College* tools.

In concluding, Director Cordray said student loans provide the means for students to pursue opportunities through higher education that they otherwise might not be able to afford. He suggested that the Bureau must now work to "ensure" that the cost of those opportunities does not ultimately cost students their financial futures.

CFPB Study Finds Medical Debt in Collections May Penalize Consumer Credit Scores

The Consumer Financial Protection Bureau (CFPB or Bureau) released a research report on May 20, 2014, indicating credit scoring models may underestimate the creditworthiness of consumers with medical debt in collections. The study, *CFPB Data Point: Medical Debt and Credit Scores*, also found that scoring models may not be crediting consumers who repay medical debt that has gone to collections.

The study considered 5 million anonymized credit records from September 2011 to September 2013 to assess how well a common credit score predicted a consumer's future likelihood of paying back debt. To do that, the study looked at the credit histories and scores of consumers in September 2011 and then examined their actual loan payment patterns over the next two years. In general, the report found that:

- Credit scoring models could be more precise if they accounted differently for medical debt in collection and medical debt that has been repaid by the borrower. (The CFPB notes that traditional scoring models do not differentiate between medical debt collections and other non-medical debt collections and that these models also do not differentiate between collections that have been fully repaid and those that remain unpaid.)
- Consumers with more medical than non-medical debt in collection generally paid back their loans or bills on par with consumers with credit scores about ten points higher.
- Consumers with more paid than unpaid medical debt in collections paid back their loans or bills on par with consumers with credit scores about twenty points higher.

The CFPB notes that concerns about the use of medical collections in credit scoring models have been generated in part because of the circumstances under which the debts arise and come to be reported to the national credit reporting agencies, including the fact that the

majority (99.4 percent) of reported medical debt is reported by collection agencies, and that many consumers either do not know their debt is in collection or view the debt as the responsibility of the insurance company.

In prepared remarks regarding the report, CFPB Director Richard Corday echoed these findings saying that medical debt should be considered differently from other types of consumer debt because it can result from an unpredictable and costly event and because the debt is sometimes caused by billing issues with medical providers or insurers.

CFPB Releases *Supervisory Highlights* Profiling Observations in Nonbank Markets

The Consumer Financial Protection Bureau (CFPB or Bureau) issued its fourth *Supervisory Highlights* report on May 22, 2014, detailing the findings of supervision work completed between November 2013 and February 2014. The report reiterates the importance the CFPB places on strong compliance management systems (CMS) and presents additional observations gleaned from its nonbank supervisory activities in the short-term, small dollar (payday) lending, debt collection, and consumer reporting markets.

The CFPB reports that it found many nonbank companies have "systemic flaws" in their CMS, including issues related to written policies and procedures, board and management oversight, and complaints management and dispute resolution. Examiners also noted violations of federal consumer financial laws, including the unfair, deceptive or abusive acts or practices (UDAAP) provisions.

Within the specific nonbank markets highlighted in the report, some of the problems identified by examiners included the following:

- Some payday lenders were found to have violated UDAAP provisions in their debt collection efforts by, among other things: deceiving consumers about their intent to pursue legal action to collect debt or to impose additional fees; initiating ACH transactions not authorized by contract; visiting consumers at their workplace; and hiring third-party debt collectors that engage in behaviors that violate UDAAP and other federal consumer financial laws.
- Some debt collectors were found to have failed to: investigate disputed information reported to consumer reporting agencies; obtain authorizations to initiate recurring electronic transfers of funds from consumer accounts; and comply with the *Fair Debt Collection Practices Act* prohibitions related to making phone calls and making false and misleading statements.
- Some consumer reporting agencies were found not to have properly handled consumer credit report dispute documents and to refuse disputes from some consumers.

The CFPB notes that it uses the *Supervisory Highlights* to present examination findings in particular areas in order to communicate the standards of conduct expected for supervised entities and to permit industry participants to use the information to ensure their own operations remain in compliance with federal consumer financial law.

Federal Reserve Repeals Regulations DD and P (CFPB Has Ongoing Authority)

The Federal Reserve Board (Federal Reserve) released two final rules on May 22, 2014 that repeal the agency's Regulation DD (*Truth in Savings*) and Regulation P (*Privacy of Consumer*

Financial Information), respectively, effective 30 days after publication in the *Federal Register*. Rulemaking authority for these federal consumer financial laws was transferred to the Consumer Financial Protection Bureau (CFPB or Bureau) by the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act). The CFPB has published interim final rules that substantially duplicate the Federal Reserve's regulations. The Federal Reserve notes that under the Dodd-Frank Act, the Federal Reserve retained authority over certain motor vehicle dealers that offer consumer financial services but are not covered by the CFPB's authority, however, the Federal Reserve states that it is also not aware of any motor vehicle dealers that are engaging in activities subject to the *Truth in Savings Act*.

Also on May 22, the Federal Reserve published a final rule to amend the Identity Theft Red Flags provisions of the Federal Reserve's Regulation V (*Fair Credit Reporting*), which require financial institutions and creditors to implement identity theft prevention programs. The final rule reflects legislation that amended the *Fair Credit Reporting Act* (FCRA) to clarify that these provisions apply only to creditors that regularly extend credit or obtain consumer reports in the ordinary course of their business. The amendments become effective 30 days after publication in the *Federal Register*.

OCC Finalizes Integration of Certain National Bank and Federal Savings Association Consumer Protection Rules

The Office of the Comptroller of the Currency (OCC) released Bulletin 2014-23 to announce that it has issued a final rule to combine certain of the OCC consumer protection rules for national banks with rules issued by the former Office of Thrift Supervision (OTS) regarding savings associations. The final rule integrates the following OCC rules by amending the national bank rule to include federal savings associations (and when appropriate, state savings associations) and removing the savings association rule:

- 12 CFR 14 and 12 CFR 136, which establish consumer protection rules for the sale of insurance or annuities to consumers.
- 12 CFR 21 and 12 CFR 163.177, which require the establishment and maintenance of procedures "reasonably designed to assure" and monitor compliance with *Bank Secrecy Act* (BSA) requirements and establish minimum requirements for BSA compliance programs.
- 12 CFR 26 and 12 CFR 196, which implement the requirements of the *Depository Institution Management Interlocks Act*.
- 12 CFR 34, subpart C, and 12 CFR 164, subpart A, which address financial transactions related to real estate that require the services of an appraiser.
- 12 CFR 35 and 12 CFR 133, which impose certain disclosure and reporting requirements with respect to certain *Community Reinvestment Act*-related agreements entered into by an insured depository institution or its affiliate ("CRA sunshine").
- 12 CFR 41, subpart I, and 12 CFR 171, subpart I, which contain the OCC's rules regarding the disposal of records containing consumer information.

The OCC states that each pair of bank and savings association rules addressed in the final rule is substantively identical and, therefore, the final rule does not result in any substantive changes for national banks or federal savings associations. The final rule becomes effective June 16, 2014.

House Subcommittee Conducts Hearing to Consider Legislative Proposals to Modify CFPB

The House Committee on Financial Services' Subcommittee on Financial Institutions and Consumer Credit conducted a hearing on May 21, 2014 to solicit testimony on a number of legislative proposals intended to address transparency and accountability at the Consumer Financial Protection Bureau (CFPB or Bureau).

Four witnesses, including representatives from a law firm, trade association, research group, and academia provided testimony. One witness was not supportive of the proposed legislation, stating that, among other things, none of the proposed bills was necessary to protect consumers or to provide needed oversight.

The bills, draft bills, and their intended purpose include:

- H.R. 3389, the *CFPB Slush Fund Elimination Act of 2013,* which would eliminate the Bureau's Civil Penalty Fund and require the CFPB to remit fines it collects to the U.S. Treasury.
- H.R. 3770, the *CFPB-IG Act of 2013,* which would create a separate, independent inspector general for the CFPB.
- H.R. 4262, the *Bureau Advisory Commission Transparency Act,* which would clarify that the Federal Advisory Committee Act applies to the CFPB.
- H.R. 4383, the *Bureau of Consumer Financial Protection Small Business Advisory Board Act,* which would create a small business advisory board at the CFPB.
- H.R. 4539, the *Bureau Research Transparency Act,* which would require CFPB research papers made available to the public be accompanied by all studies, data, and analyses on which the paper was based.
- H.R. 4604, the *CFPB Data Collection Security Act,* which would require the CFPB to create an opt-out list for consumers who do not want the CFPB to collect personally identifiable information about them and to delete or destroy information about a particular consumer within a specified period of time following collection. It further requires CFPB employees accessing personally identifiable information about consumers to hold a 'confidential' security clearance.
- H.R. 4662, the *Bureau Advisory Opinion Act,* which would establish a process by which covered persons can submit inquiries concerning the conformance of prospective products and services with federal consumer financial law and receive a confidential opinion from the Director.
- Discussion Draft of the "Bureau Arbitration Fairness Act," which would repeal the CFPB's authority to prohibit, condition, or limit the use of arbitration provisions in contracts for consumer financial products or services.
- Discussion Draft of the "Bureau Guidance Transparency Act," which would require that the CFPB, in issuing any guidance, provide a public notice and comment period before issuing the guidance in final form, and make public any studies, data, and other analyses it relied on in preparing and issuing its guidance.
- Discussion Draft of the "Preventing Regulatory Abuse Act of 2014," which would: require the CFPB to go through a formal rulemaking with public notice and comment in order to publish a final rule that gives clear guidance on the CFPB's definition of an "abusive" act or practice; enact a moratorium on any enforcement action using the CFPB's "abusive" authority until the final rule is published; and repeal the CPFB's authority to prohibit "abusive" acts or practices if it fails to conform to specified rulemaking timelines.
- Discussion Draft of the "Bureau Examination Fairness Act," which would: prohibit the CFPB from including enforcement attorneys in examinations; regulate CFPB data requests

during the course of examination; place time limitations on the completion of examination field work and the issuance of exam reports and supervisory letters; and prohibit concurrent limited-scope exams at the same institution.

Capital Markets & Investment Management

CFTC Makes First Whistleblower Program Award

The Commodities Future Trading Commission (CFTC or Commission) announced on May 20, 2014, that it will make its first award to a whistleblower as part of the Commission's Whistleblower Program created by the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act). The award for providing valuable information about violations of the *Commodity Exchange Act* is approximately $240,000.

CFTC Acting Chairman Mark Wetjen said, "Information received under the Whistleblower Program helps the agency better protect market participants and the public through successful enforcement actions."

Under the Dodd-Frank Act, the CFTC's Whistleblower Program provides monetary awards to persons who report violations of the *Commodity Exchange Act* if the information leads to an action that results in more than $1 million in monetary sanctions. Whistleblowers are eligible to receive between 10 and 30 percent of monies collected. The CFTC can also pay awards based on monetary sanctions collected by other authorities in actions that are related to a successful CFTC action, and are based on information provided by a CFTC whistleblower. The Dodd-Frank Act whistleblower provisions also prohibit retaliation by employers against employees who provide the CFTC with information about possible violations, or who assist in any investigation or proceeding based on such information.

SEC Chair Discusses Current Enforcement Environment before the New York City Bar Association

In a May 19, 2014, address before the New York City Association's Third Annual White Collar Crime Institute, Securities and Exchange Commission (SEC) Chair Mary Jo White described what she referred to as "pressure points" faced by regulatory agencies in the current enforcement environment. Chair White outlined three such issues.

One type of pressure occurs when multiple regulators are working in the same or overlapping investigations. Chair White offered the following advice for regulators:

- Ensure that each agency's respective interests "do not lead to unjust, duplicative outcomes" by making "a frank assessment of whether it provides the right expertise, jurisdictional authority, and appropriate remedies."
- Avoid unnecessary competition among agencies for cases and headlines.
- Apply specific expertise and enforcement tools and thoroughly investigate all the evidence.

- Work with criminal law enforcement colleagues, as appropriate.

As identified by Chair White, a second pressure point occurs when deciding whether to charge individuals, entities, or both as a defendant. She said that the decision should be dictated by the nature of the misconduct and strength of the evidence, which the SEC determines by:

- Focusing investigations initially on the individuals closest to the wrongdoing, working outward and upward to determine who else should be charged, including whether to charge the corporation.
- Focusing on individuals who have engaged in unlawful activity but attempted to insulate themselves from liability by avoiding direct communication with the defrauded investors. (Chair White stated the SEC is using a "new approach" that relies on Section 20(b) of the Securities Exchange Act of 1934.)
- Charging corporations for the wrongful conduct of their employees if the corporations violate the law by failing to comply with applicable regulatory requirements.
- Charging only corporations with negligence when an entity makes a material misstatement or omission in the offer or sale of securities and the evidence will not support holding any individual responsible.

The third pressure point occurs when applying a range of remedies and resolutions. At the SEC these include:

- The use of bars for periods of time that respond to the seriousness of the misconduct.
- The use of monitors or independent compliance consultants to address the root causes of the misconduct.
- The requirement for admission of wrongdoing in cases where there is a heightened need for public accountability or for the investing public to know the unambiguous facts.

In concluding, Chair White said the SEC is focused on "aggressively pursuing wrongdoing – whether individual or corporate – working cooperatively with our fellow regulators, and sending strong messages of deterrence within the range and full reach of our legal authority and tools."

FINRA Chairman and Chief Executive Discusses Investor Trust in Markets at FINRA Annual Conference

Rick Ketchum, Chairman and Chief Executive of the Financial Industry Regulatory Authority (FINRA), discussed FINRA's role in restoring investor confidence and trust during his May 19, 2014, address at FINRA's Annual Conference. He focused many of his comments on FINRA's Comprehensive Automated Risk Data System (CARDS).

Chairman Ketchum said CARDS will allow FINRA to collect and manage data from firms, enabling it to quickly identify trends and product concentrations that are harmful to investors and to take swift, responsive action.

In addressing broker concerns regarding CARDS, Chairman Ketchum said the security risk of CARDS is very low because the data base will not use personally identifiable information. He said FINRA's comprehensive controls are based on industry best practices, guided by federal and international standards, and compliant with data privacy regulations and laws. He also said:

- FINRA has created a pilot for CARDS and is discussing the bottom-line impact it may have on firms from an implementation standpoint.
- Firms can send data to FINRA directly or through a clearing firm or service bureau.
- FINRA plans to permit variability in the format of data related to suitability.

- In its initial phases, CARDS will not require firms to submit information about products not held at the firm. In a later phase, collection of this information would be required pursuant to additional rulemaking.

Chairman Ketchum also discussed FINRA's equity and options cross-market surveillance program, which he said "can run dozens of surveillance patterns and threat scenarios across our mountain of data to look for, among other things, layering, spoofing, algo gaming, wash sales and other manipulative and distortive conduct."

Chair Ketchum said the" biggest game changer" will be the implementation of the Consolidated Audit Trail (CAT), which will:

- Collect, identify, and link orders, trades, and quotes in equities and options from all market participants and flag the activity of each participant with a unique identifier.
- Provide a level of granularity and precision that will dramatically reduce false positive alerts.
- Enable cross-market surveillance for options and cross-product surveillance across equities and options.

In concluding, Chair Ketchum said FINRA is determined to be a key engine in restoring trust in the securities industry and is using the most advanced technology solutions available in that effort. He asked brokers to be similarly committed to that effort by embracing strong regulation.

CFTC Commissioner O'Malia Provides Remarks before the Meeting of the Global Markets Advisory Committee

In an opening statement at the meeting of the Global Markets Advisory Committee (GMAC) on May 21, 2014, Commodity Futures Trading Committee (CFTC) Commissioner Scott D. O'Malia said markets and market structures are evolving in response to the varying regulatory tracks that different jurisdictions are taking in their approach to implementation of G20 OTC derivatives reforms. He said it is "critically important" for international regulators "to harmonize swap data reporting, exchange trading, and central counterparty (CCP) clearing before market fragmentation and contraction of liquidity hardens and becomes permanent." Specifically, he asked that the CFTC:

- Resolve the regulatory differences between jurisdictions to enable substituted compliance or equivalence; and
- Develop an understanding of the mutual recognition regimes under which jurisdictions will recognize the CCPs that meet the standards set forth in the agreed-upon Principles for Financial Market Infrastructures (PFMIs) before proceeding on a proposal to create exempt designated clearing organizations (DCOs).

In concluding, Commissioner O'Malia urged that work begin immediately on an agreement to allow the United States and the European Union to simultaneously engage in harmonization efforts that would provide both jurisdictions with the ability to access and share high-quality, low-cost data to improve regulatory oversight of the entire swaps market.

Enforcement Actions

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

- The SEC charged two California-based doctors with illegally trading on inside knowledge that the Food and Drug Administration (FDA) had halted the clinical trials of a new drug being developed by a biopharmaceutical company. The SEC alleges that the doctors, both medical investigators in the trials, made more than $45,000 in illicit profits by selling their personal shares ahead of the public announcement that the drug trials would be discontinued. The SEC seeks a permanent injunction, disgorgement, and civil penalties. The doctors have agreed to settle the SEC's charges by paying a combined total of $116,864.
- The SEC charged four former officials at a clearing firm for their roles in Regulation SHO violations. The SEC alleges that the firm's securities lending practices intentionally and systematically failed to purchase or borrow sufficient shares to close out failures to deliver to a registered clearing agency for all sales of equity securities that it cleared. The SEC also alleges that the clearing firm's chief compliance officer knowingly assisted in the violations and that the firm's president and CEO ignored significant red flags about the chief compliance officer's involvement in the violations and the fact that he was concealing them from FINRA and the SEC. Two former securities lending officials at the firm were charged in administrative proceedings and agreed to settle the charges.
- The SEC charged the former chief risk officer (CRO) at a major public accounting firm for causing violations of the auditor independence rules. The SEC Order finds that the CRO repeatedly accepted tens of thousands of dollars in casino markers while he was the advisory partner on an audit of a casino gaming corporation that was performed by a subsidiary of the accounting firm. The CRO agreed to settle the SEC's charges by being suspended for at least two years from practicing as an accountant on behalf of any publicly traded company or other entity regulated by the SEC.
- The CFTC issued an Order and simultaneously settled charges with a Michigan-based CFTC-registered Futures Commission Merchant (FCM) and former Retail Foreign Exchange Dealer (RFED) that failed to comply with minimum financial requirements for FCMs and RFEDs. According to the Order, the FCM did not continuously maintain its required adjusted net capital (ANC), with month-end ANC computations showing that the FCM was undercapitalized by as much as $30 million at one point. The CFTC Order imposes a $200,000 civil monetary penalty and a cease and desist order. The FCM settled the charges without admitting or denying any of the findings or conclusions.
- The SEC charged a Florida-based private fund manager with defrauding investors in a pyramid scheme that ensued after the manager lost their money on bad investments and diverted funds to his personal use. The SEC alleges that the fund manager raised $3.8 million from investors in three private investment funds that he operated, pocketed $1.1 million of those funds, and used $1.4 million to pay prior investors. The U.S. Attorney's Office announced criminal charges against the fund manager. The SEC seeks a permanent injunction, disgorgement, and civil money penalties.
- The CFTC announced that it obtained an emergency court Order freezing the assets of a Florida couple and their company and prohibiting them from destroying books and records. The CFTC had filed an enforcement action against the couple and their company earlier in the month, charging them with fraudulently soliciting customers and misappropriating customer funds in connection with illegal, off-exchange transactions in precious metals. They are charged with using virtually all of the customers' funds for personal expenses. Neither the company nor the couple is registered with the CFTC. The CFTC seeks restitution, disgorgement, permanent trading and registration bans, civil monetary penalties, and a permanent injunction.
- The SEC charged a former director of a New York-based company and others in his family circle with insider trading ahead of the company's sale to a private equity firm. The SEC alleges that the director tipped his three siblings and a friend with the confidential

information. The SEC is seeking a permanent injunction, disgorgement and civil penalties. Without admitting or denying the charges, they agreed to pay a total of more than $500,000 in a settlement that is subject to court approval.

- The SEC charged five penny stock promoters with conducting various manipulation schemes involving undisclosed payments to induce purchases of a microcap stock to generate the false appearance of market interest. The SEC also charged a Massachusetts-based microcap company and its CEO with orchestrating a pair of illicit kickback schemes and an insider trading scheme involving the company's stock. A stock promoter in Texas is charged for his role in the insider trading scheme. The SEC is seeking financial penalties, disgorgement of ill-gotten gains plus prejudgment interest, and permanent injunctions. The SEC also seeks penny stock bars against all of the individuals charged in these cases as well as an officer-and-director bar for the CEO.

Recent Supervisory Actions against Financial Institutions

Last Updated: May 23, 2014

Agency	Institution Type	Action	Date	Synopsis of Action
Federal Reserve Board	State member bank	Civil Money Penalty	05/20	The Federal Reserve Board issued an Order of Assessment of Civil Money Penalty against a New Mexico-based state member bank to address violations of the National Flood Insurance Act.
Federal Reserve Board	Foreign Bank	Cease and Desist; Civil Money Penalty	05/19	The Federal Reserve Board issued an Order to Cease and Desist, and Order of Assessment of Civil Money Penalty against a foreign bank with U.S. operations to address deficiencies related to oversight, management, and controls governing compliance with U.S. laws, and to pay a $100 million civil money penalty related to findings of unsafe and unsound banking practices and failure to comply with U.S. banking laws. Total payments in conjunction with related actions by Department of Justice and New York State Banking Department totaled $2.6 billion.
Federal Deposit Insurance Corporation	State nonmember bank	Consent Order; Order for Restitution; Civil Money Penalty	05/13	The Federal Deposit Insurance Corporation entered into Consent Order, Order for Restitution, and Civil Money Penalty with an insured state member bank and its institution-affiliated party to address unfair and deceptive acts and practices provisions of the Federal Trade Commission Act and violations of the Servicemembers Civil Relief Act. Total payments of $96.6 million will be required.
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.

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 hckelly@kpmg.com

Amy Matsuo, Principal, Enterprise & Consumer Compliance amatsuo@kpmg.com

John Schneider, Partner, Investment Management Regulatory jjschneider@kpmg.com

Tracy Whille, Principal, Capital Markets Regulatory twhille@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