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International Association of Insurance Supervisors Releases Proposal for Basic Capital Requirements for G-SIIs

The International Association of Insurance Supervisors (IAIS) released a proposal for Basic Capital Requirements (BCR) for Global Systemically Important Insurers (G-SIIs) on July 8, 2014. IAIS is soliciting feedback regarding the proposed requirements, which are expected to apply to G-SIIs beginning 2015 or shortly thereafter. Comments are invited by August 8, 2014.

The proposal is the second public consultation document from the IAIS on the BCR. In the first consultation, issued in December 2013, the IAIS sought feedback on design options for the development of the BCR. The second consultation seeks input on a specific proposal to facilitate the final design and calibration of the BCR before it is delivered to the G20 summit in November 2014.

In the current proposal, required capital would be calculated on a consolidated group-wide basis, with all holding companies, insurance legal entities, banking legal entities and any other service companies included in the consolidation. It would reflect "major categories of risks impacting the businesses of G-SIIs" and account for both on- and off-balance-sheet exposures. It would be constructed in three basic components:

- An insurance component;
- A banking component that applies the Basel III leverage ratio or risk weights; and
- An "other non-insurance activities" (financial and material non-financial) component for those activities not currently subject to regulatory capital requirements.

The IAIS explains the development of the BCR is the first step of a long-term project to develop risk-based, group-wide global insurance capital standards. It will be followed by the development of higher loss absorption requirements for G-SIIs, which are expected to be completed by the end of 2015, and the development of a risk-based group wide global insurance capital standard, which is expected to be completed by the end of 2016 and to be applicable to internationally active insurance groups beginning 2019. More information on the BCR, including how to submit comments, is available on the IAIS Web site.

OCC Increases Assessments for National Banks and Federal Savings Associations with Total Assets Greater Than $40 Billion

The Office of the Comptroller of the Currency (OCC) on July 9, 2014, adopted a final rule increasing assessments for national banks and federal savings associations (FSAs) with total assets of more than $40 billion. The marginal assessment rate will increase 14.5 percent beginning September 30, 2014. The increased assessment for individual institutions will range between 0.32 percent and approximately 14 percent, depending on an institution's total assets as reflected in its June 30, 2014, Consolidated Report of Condition and Income (Call Report). The OCC estimates the average increase in assessments for affected banks and FSAs will be 12 percent. There will be no increase in assessments for banks or FSAs with $40 billion or less in total assets.

The OCC will implement the increase in assessments by issuing an amended Notice of Office of the Comptroller of the Currency Fees and Assessments, which will become effective as of the semiannual assessment due on September 30, 2014.

OCC to Host Risk Assessment and Compliance Risk Workshops

The Office of the Comptroller of the Currency (OCC) announced that it will host two workshops in Syracuse, New York, between August 5 and 6. The workshops are intended for directors of national community banks and federal savings associations and will cover Compliance Risk and Risk Assessment. The Compliance Risk workshop will focus on major compliance risk and consumer protection regulations, such as the Qualified Mortgage Rule, *Bank Secrecy Act*, and *Community Reinvestment Act*, along with key elements of an effective compliance risk management program. The Risk Assessment workshop discusses the OCC's approach to risk-based supervision and best practices to identify, measure, monitor, and control risk. Industry topics such as credit risk, strategic risk, and the regulatory environment are included in the discussion. More information is available on the OCC Web site.

FSB Launches Peer Review of Supervisory Frameworks and Approaches to SIFIs

On July 4, 2014, the Financial Stability Board (FSB) announced that it will begin a thematic peer review of supervisory frameworks and approaches to systemically important financial institutions (SIFIs) with a focus on global systemically important banks (G-SIBs). The FSB review will be based on responses to two questionnaires; one for national supervisory authorities and one for a representative sample of G-SIBs. The FSB is requesting feedback from financial institutions, industry associations, and other stakeholders on the topics covered in the questionnaires by September 12, 2014.

The effort is the result of a September 2013 FSB report entitled *Report to the G20 on Progress and Next Steps Towards Ending "Too Big to Fail*," which recommended a peer review of supervisory frameworks and approaches to identify improvements and remaining challenges in supervisory practices for SIFIs, including "the ability for supervisors to exercise judgment and more effectively challenge G-SIBs' risk management practices and decision making processes." It is being conducted in close consultation with the Basel Committee on Banking Supervision and considers how supervisors have changed, or plan to change, their prudential supervisory framework and approach for G-SIBs and, as appropriate, other domestically significant banks, as well as what changes they consider most significant for enhancing supervisory effectiveness. It is organized around the following elements of the prudential supervisory framework and approach:

- Supervisory mandate, strategy and culture;
- Organizational structure;
- Supervisory approach, methods and tools;
- Cooperation;
- Operational independence and resources; and
- Lessons learned and next steps.

House Financial Services Committee Hearing Considers Bill to Increase Accountability and Transparency of Federal Reserve

The House Committee on Financial Services conducted a hearing on July 10, 2014, entitled *Legislation to Reform the Federal Reserve on Its 100-Year Anniversary*, which considered testimony regarding H.R. 5018, *the Federal Reserve Accountability and Transparency Act*. The bill would require the Federal Reserve Board to:

- Provide the Congress with a clear rule to describe the course of monetary policy;
- Conduct cost-benefit analysis when it adopts new rules;
- Enhance its accountability to Congress in the conduct of regulatory policy;
- Require transparency about the bank stress tests and also the international financial regulatory negotiations conducted by the Federal Reserve Board, the Department of the Treasury, and the Federal Deposit Insurance Corporation (FDIC); and
- Disclose the salaries of highly paid employees and require those employees to abide by the same ethical requirements as other federal financial regulators.

One witness disagreed with some of the bill's requirements, testifying that the bill would constrain the ability of officials to respond fully and in a timely manner to changing economic and financial circumstances. In addition, he recommended the president of the Federal Reserve Bank of New York be a presidential appointment, subject to confirmation by the U.S. Senate.

Other witnesses agreed with many of the bill's requirements and made the following recommendations:

- Look for alternative ways of addressing concerns about systemic instability and contagion, which could include removing the government guarantees; introducing mechanisms that reward risk monitoring; and replacing regulators' model-based rules with simple standards;
- Subject the parameters and structure of the stress tests to a public rulemaking process;
- Strengthen the robustness of the financial system through a greater diversity of asset holdings, business models, and funding sources;
- Clarify the geographic residency qualifications of the *Federal Reserve Act* to broaden representation on the Federal Reserve Board; and
- Transfer the Federal Reserve's financial regulatory and supervisory responsibilities to the FDIC.

Cybersecurity Information Sharing Act Approved by Senate Intelligence Committee

On July 9, 2014, the Senate Select Committee on Intelligence approved S. 2588, the *Cybersecurity Information Sharing Act*, by a vote 12-3. The legislation would expand information shared between the government and private sector companies regarding cybersecurity threats and defensive mechanisms. Among other things, the *Cybersecurity Information Sharing Act* bill would:

- Require the director of national intelligence to increase the sharing of classified and unclassified cyber threat information to the private sector;
- Authorize individuals and companies to monitor their own computer networks and those of their consenting customers for cyber threats and to implement countermeasures to block those threats;
- Authorize the voluntary sharing of cyber threat information by individuals and companies with each other and with the government. Companies would be required to take appropriate measures to protect against the sharing of personally identifiable information;

- Establish liability protections for individuals and companies that appropriately monitor their networks or share cyber information;
- Require federal government procedures for the receipt, sharing and use of cyber information;
- Limit the government's ability to use information it receives for cyber security-related purposes; and
- Require reporting on the implementation of the authorities.

Federal Reserve Vice Chairman Fischer Offers Comment on Financial Reform and Too-Big-To-Fail Issues

In a speech about financial reform before the National Bureau of Economic Research on July 10, 2104, Federal Reserve Board Vice Chairman Stanley Fischer said the United States is making significant progress in strengthening its financial system and reducing the probability of future financial crises. He said, however, that more needs to be done, particularly in the area of too-big-to-fail (TBTF) institutions where work is less advanced than the work on raising capital and liquidity ratios. "While we must continue to work toward ending TBTF or the need for government financial intervention in crises, we should never allow ourselves the complacency to believe that we have put an end to TBTF."

Vice Chair Fischer made the following observations:

- Work on the use of the resolution mechanisms set out in the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act), based on the principle of a single point of entry, may make it possible to resolve banks in difficulty at no direct cost to the taxpayer or at least at a cost lower than was previously possible;
- Progress in agreeing on the resolution of global systemically important financial institutions (G-SIFIs) and some other aspects of international coordination has been slow despite rapid agreement on needed changes in regulation and supervision by the Basel Committee on Banking Supervision and the Financial Stability Board;
- More research is needed on the effectiveness of microprudential and other tools that could be used to deal with macroprudential problems; and
- Regulators must coordinate their efforts to ensure their effectiveness in the event of a crisis.

In concluding, Vice Chair Fischer said, "We need always be aware that the next crisis--and there will be one–will not be identical to the last one, and that we need to be vigilant in both trying to foresee it and seeking to prevent it. And if, despite all our efforts, a crisis happens, we need to be willing and prepared to deal with it."

Enterprise & Consumer Compliance

Federal Reserve Publishes Report on Independent Foreclosure Review and Payment Agreement for Large Mortgage Servicers

The Federal Reserve Board (Federal Reserve) on July 7, 2014, published a report regarding the Independent Foreclosure Review (IFR) that was initiated by the Federal Reserve, Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision following the issuance of formal enforcement actions against 16 mortgage servicing companies in 2011 and 2012. Fifteen (15) of the 16 mortgage servicers subsequently entered into Payment Agreements with the Federal Reserve and the OCC during 2013 that, in total, required the mortgage servicers to provide nearly $10 billion in cash and other foreclosure prevention assistance to harmed borrowers. Satisfaction of these agreements fulfills the foreclosure file reviews required by the enforcement actions and conducted under the IFR.

The Federal Reserve's report provides information relating to the conduct of the foreclosure file reviews, including tables with data on the status of findings of the reviews up to the time they were terminated and replaced by the Payment Agreements, and tables with data on the status of the payments being made to borrowers and other foreclosure prevention assistance being provided under the Payment Agreements. It focuses primarily on servicers regulated by the Federal Reserve. The OCC separately released a public report containing similar data for the servicers it regulates in April 2014.

The Federal Reserve concurrently released portions of the third-party vendor management policies and procedures for two financial institutions that were covered by the original enforcement actions. The documents address the management of residential mortgage loan servicing and foreclosure processing conducted by third-party vendors consistent with the requirements of the enforcement actions.

Interagency Webinar on Community Reinvestment Scheduled

The Federal Deposit Insurance Corporation's (FDIC) Division of Depositor and Consumer Protection (DCP) announced that it will participate in an interagency webinar on July 17, 2014, that will focus on the recently revised Interagency Questions and Answers regarding the *Community Reinvestment Act* and the updated Interagency Large Institution Community Reinvestment Act Examination Procedures. Staff from the FDIC, Office of the Comptroller of the Currency), and Federal Reserve Board will make presentations. The FDIC has also invited community organizations to participate. Participants should enroll by July 16, 2014. More information is available on the agencies' Web sites.

CFPB Clarifies the Applicability of the Ability-to-Repay Rule to Successors-in-Interest

On July 8, 2014, the Consumer Financial Protection Bureau (CFPB or Bureau) issued a final rule, effective July 11, 2014, to clarify that "where a successor-in-interest (successor) who has previously acquired title to a dwelling agrees to be added as obligor or substituted for the existing obligor on a consumer credit transaction secured by that dwelling, the creditor's written acknowledgement of the successor as obligor is not subject to the Bureau's Ability-to-Repay Rule (ATR Rule)" because, the CFPB concludes, "such a transaction does not constitute an assumption as defined by Regulation Z: (Section 1026.20(b)). The Bureau states a creditor may rely on this interpretation as a safe harbor under the *Truth-in-Lending Act*.

A successor is a person who receives legal interest in a property, typically by a transfer from a family member, by operation of law upon another's death, or under a divorce decree, or separation agreement. Where the successor acquires property that is subject to a mortgage, the successor is not personally liable for the associated debt, but may choose to assume the debt. The final rule states that unless such a change meets the definition of an assumption under Section 1026.20(b), the change of obligors does not trigger the ATR requirements.

CFPB Releases Staff Memo Outlining Policy that Recognizes All Lawful Marriages Equally

In a June 25, 2014, staff memo, Richard Cordray, Director of the Consumer Financial Protection Bureau (CFPB or Bureau) outlined the policy of the Bureau to recognize all lawful marriages valid at the time of the marriage in the jurisdiction where the marriage was celebrated. He said that policy is aligned with that of other federal agencies following the 2013 U.S. Supreme Court decision striking down the *Defense of Marriage Act* as unconstitutional. The staff memo was published on the CFPB blog on July 8, 2014.

In the memo, Director Cordray said that …"when it comes to administering, enforcing, or interpreting the laws, regulations, and policies within our jurisdiction, we use and interpret the terms like "spouse," "marriage," "married," "husband," "wife," and any other similar terms related to family or marital status to include lawful same-sex marriages and lawfully married same-sex spouses." The policy applies to all of the laws, regulations and policies administered by the Bureau, including:

- *Equal Credit Opportunity Act* (ECOA);
- *Fair Debt Collection Practices Act* (FDCPA);
- *Truth in Lending Act* (TILA), and
- *Real Estate Settlement Procedures Act* (RESPA).

CFPB Takes Enforcement Action Against a Payday Lender for Illegal Debt Collection Practices

The Consumer Financial Protection Bureau (CFPB or Bureau) on July 11, 2014, took enforcement action against a Texas-based payday lender to address unfair, deceptive, and abusive practices in connection with the company's debt collection activities in violation of the *Consumer Financial Protection Act of 2010*. The resulting Consent Order requires the company to pay a total of $10 million, including $5 million in refunds to harmed borrowers and a $5 million civil money penalty. The company agreed to the issuance of the Consent Order without admitting or denying any of the findings of fact or conclusions of law.

The CFPB found that the company used illegal debt collection tactics, including harassment and false threats of lawsuits or criminal prosecution, when collecting its own debt and when using third-party debt collectors to collect its debts. The Bureau also found the company created a false sense of urgency to encourage delinquent borrowers to repay existing loans and then take out additional payday loans, which resulted in additional fees. The CFPB states the "creation of the false sense of urgency to get delinquent borrowers to take out more payday loans is abusive."

SEC Commissioner Aguilar Addresses Exploitation of Elderly Investors

In a meeting of the Investor Advisory Committee on July 10, 2014, Commissioner Louis A. Aguilar discussed the efforts of the Securities and Exchange Commission (SEC) regarding financial exploitation of the elderly. He stated that, to date, the SEC has addressed financial elder abuse with enforcement actions and by making detection of elder financial exploitation a focus for its 2014 examination program. The SEC has also provided educational materials to seniors about the risk of financial exploitation.

Commissioner Aguilar said the SEC should do more, including:

- Establish a permanent, internal elder financial abuse working group comprised of members of the relevant divisions and offices;
- Host an annual conference focused on issues and solutions relating to elder financial abuse;
- Keep issues affecting elderly investors in consideration when engaged in the rulemaking process;
- Increase outreach to elderly investors through better coordination with self-regulatory organizations and other regulators; and
- Improve its data collection and analysis efforts in tracking enforcement actions, tips, complaints, and referrals involving elderly investors.

Commissioner Aguilar also said that the Elder Justice Coordinating Council (EJCC), created by Congress in 2009 to identify and propose solutions to the problems surrounding elder abuse, represents an "unprecedented opportunity for federal agencies involved in the fight against elder abuse to come together and develop, for the first time, a unified national response to this epidemic." (The Consumer Financial Protection Bureau participates as a member of the EJCC.)

In concluding, Commissioner Aguilar said, "Clearly, as the primary regulator of the capital markets, the [SEC] Commission has a lot to offer to a coordinated federal effort to address elderly financial abuse, especially with regard to the problem of the financial exploitation of older adults. To that end, the SEC should adopt clear goals, set specific objectives, outline concrete timelines, and provide periodic updates on its progress in addressing issues pertaining to retirees and the elderly, as well as on its participation in the EJCC."

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U.S. Trading Exchange Executives and Market Participants Testify Before Senate Committee on Role of Regulation

A total of seven witnesses, representing trading exchange executives and market participants, testified on July 8, 2014, before the U.S. Senate Committee on Banking, Housing & Urban Affairs in a hearing entitled, *The Role of Regulation in Shaping Equity Market Structure and Electronic Trading*. They said strengthening investor confidence requires that stock market trading rules be simplified and that broker-dealers provide the data required for investors to make accurate determinations of execution quality, including their order routing activities, dark pool operations, and order types used.

Other recommendations offered by the witnesses to enhance the structure of equity markets and electronic trading included:

- Combine the Commodities Future Trading Commission (CFTC) and the Securities and Exchange Commission (SEC);
- Improve academic and regulatory understanding of market quality and improved access to data for study;
- Confront market fragmentation;
- Institute stronger best execution requirements;
- Implement a "trade-at" rule;
- Strengthen and improve surveillance capabilities at the regulatory level;
- Give deference to regulated, transparent trading centers where orders compete and contribute to public price discovery information. (Limited exceptions could apply for those with unique circumstances.);
- Create a fraud office to prosecute financial criminals;
- Continue to build a culture of evidence-based rulemaking at federal regulatory agencies;
- Eliminate the maker-taker pricing model and substantially reduce access fee caps;
- Harmonize the regulation of exchanges, alternative trading systems and other trading venues; and
- Require registration for all high-frequency trading participants and the establishment of a uniform regulatory regime.

SEC Approves Amendments to FINRA Rule Regarding Communications with the Public

The Financial Industry Regulatory Authority (FINRA) released Regulatory Notice 14-30 to announce that the Securities and Exchange Commission (SEC) has approved amendments to FINRA Rule 2210, *Communications with the Public*, that exclude research reports on exchange-listed securities from filing requirements under the rule. The amendments also clarify that free writing prospectuses that are exempt from the SEC filing requirements are not subject to the filing or content standards of Rule 2210. The amendments became effective July 11, 2014.

As a result, firms no longer are required to file with FINRA any research reports concerning only securities listed on a national securities exchange, such as reports concerning an exchange-listed closed-end fund or master limited partnership, other than research reports that must be filed pursuant to Section 24(b) of the *Investment Company Act of 1940*. In addition, firms that are subject to the new member filing requirement will no longer be required to file any research reports concerning only securities listed on a national securities exchange, other than research reports that must be filed pursuant to Section 24(b).

The filing requirements and content standards of FINRA Rule 2210 do not apply to prospectuses and similar documents that have been filed with the SEC, other than investment company advertisements prepared pursuant to Rule 482 under the *Securities Act of 1933*, and free writing prospectuses that are used or referred to by a broker-dealer and distributed by or on behalf of the broker-dealer in a manner reasonably designed to lead to its broad unrestricted dissemination.

Enforcement Actions

The Securities and Exchange Commission (SEC) recently announced the following enforcement action:

- The SEC charged a California school district with misleading bond investors about its failure to provide contractually required financial information and notices. The case is the first to be resolved under a new SEC initiative to address materially inaccurate statements in municipal bond offering documents. The California school district agreed to settle the charges without admitting to or denying the findings. It also agreed to adopt written policies for its continuing disclosure obligations, comply with its existing continuing disclosure obligations, cooperate with any subsequent investigation by the Enforcement Division, and disclose the terms of its settlement with the SEC in future bond offering materials.
- The SEC charged a group of seven individuals with trading on material non-public information about a particular company. The SEC charged the individuals with violating federal anti-fraud laws and the SEC's anti-fraud rule. It is seeking return of ill-gotten gains plus interest, and the payment of civil money penalties.
- The SEC announced charges against five individuals for attempting to manipulate shares of a micro-cap company. The company, however, was part of an operation conducted by the Federal Bureau of Investigation (FBI). The SEC is seeking permanent injunctions against further violations of the securities laws, return of allegedly ill-gotten gains with interest, civil monetary penalties, and to bar the defendants from being involved in penny-stock offerings. The FBI is separately pursuing criminal charges against the individuals and, if convicted, they face a maximum of five years in prison and a $250,000 fine.

Recent Supervisory Actions against Financial Institutions

Last Updated: July 11, 2014

Agency	Institution Type	Action	Date	Synopsis of Action
CFPB	Payday Lender	Consent Order	07/11	The Consumer Financial Protection Bureau initiated an enforcement action against a payday lender to address findings of unfair, deceptive, and abusive practices related to debt collection by the company and its third-party debt collectors. The company is required to pay a total of $10 million in refunds to harmed borrowers and civil money penalties. .
Federal Reserve Bank	Foreign Bank, U.S. Branch	Written Agreement	06/30	The Federal Reserve Bank entered into a Written Agreement with a foreign bank to address deficiencies related to Bank Secrecy Act/anti-money laundering compliance by its New York Branch. The agreement included provisions related to corporate governance and management oversight, BSA/AML compliance review and program, customer due diligence, suspicious activity monitoring and reporting, transaction review, Office of Foreign Assets Control compliance, and internal audit.
CFPB	Federal Savings Bank	Administrative Action	06/19	The Consumer Financial Protection Bureau and the Department of Justice initiated an enforcement action against federal savings bank to address findings of deceptive marketing and discriminatory practices related to the bank's credit card business. The bank is required to pay $56 million in refunds, $169 million in relief, and $3.5 million penalty.
CFPB, DOJ, HUD, State Attorneys General	Mortgage Lender and Servicer	Consent Order	06/17	The Consumer Financial Protection Bureau, Department of Justice, Department of Housing and Urban Development, and 49 state attorneys general proposed a consent agreement with mortgage lender and servicer to address their findings of unfair, deceptive, and abusive acts and practices engaged in by the company. The proposed agreement would require nearly $1 billion in total payment of relief, refunds, and penalties.
Federal Reserve Board	State Member Bank	Civil Money Penalty	06/17	The Federal Reserve Board entered into an Order of Assessment of Civil Money Penalty with a Florida-based state member bank to address violations of the National Flood Insurance Act.
Federal Reserve Board	Bank Holding Company	Written Agreement	06/03	The Federal Reserve Board entered into a Written Agreement with an Arizona-based bank holding company to ensure that it serves as source of strength for its state nonmember bank and nonbank subsidiaries. The agreement addressed dividends and distributions, and debt and stock redemptions.
Federal Reserve Board	State Member Bank	Written Agreement	05/29	The Federal Reserve Board entered into a Written Agreement with an Iowa-based state member bank to address deficiencies impacting it safety and soundness including: board oversight, management review, credit risk management, lending and credit administration, loan review, asset improvement, allowance for loan and lease losses, capital, and dividends and distributions,.

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