KPMG
cutting through complexity

The Washington Report
for the week ended June 13, 2014

In This Issue

Safety & Soundness

OCC Issues Interim Examination Procedures to Assess Compliance with Volcker Rule; Federal Reserve Releases Frequently Asked Questions 1

Agencies Release Proposed Rulemakings to Shift Start Date of the Capital Plan and Stress Test Cycles 1

FDIC Alerts Institutions to Forthcoming Summary of Deposits Survey 3

Federal Reserve Board Governor Tarullo Discusses Corporate Governance Before The Association of American Law Schools 3

Enterprise & Consumer Compliance

CFPB Director Cordray Testifies Before the Senate Committee on Banking, Housing and Urban Affairs 5

CFPB Deputy Director Discusses the Bureau's Toolbox Before ABA Regulatory Compliance Conference 5

President Obama Expands Eligibility for Federal Student Loan Repayment Plan 6

CFPB Publishes Request for Information on Challenges and Opportunities Presented by Mobile Financial Services 7

CFPB Charges Title Company with RESPA Violations 7

House Committees on Financial Services Approves Multiple Bills Proposing Changes to CFPB Operations 7

Capital Markets & Investment Management

IOSCO Consultation Paper Seeks Good Practices to Reduce Reliance on Credit Rating Agencies (CRAs) in Asset Management 8

SEC Commissioner Discusses Board Oversight of Cyber Risks at New York Stock Exchange Conference 9

House Committees on Financial Services Approves Two Bills Aimed at SEC Regulations. 9

SEC Commissioner Stein Says Financial Reforms Moving Too Slowly in Remarks Before Peterson Institute of International Economics 10

Enforcement Actions 10

Recent Supervisory Actions 11

Safety & Soundness

OCC Issues Interim Examination Procedures to Assess Compliance with Volcker Rule; Federal Reserve Releases Frequently Asked Questions

The Office of the Comptroller of the Currency (OCC) issued interim procedures for examiners to assess the progress of OCC-supervised entities in developing a framework to comply with the requirements of Section 619 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act), which is commonly referred to as the Volcker Rule, and the OCC's implementing regulations. The Volcker Rule generally prohibits banking entities, including national banks (other than certain limited-purpose trust banks), federal savings associations, and federal branches and agencies of foreign banks regulated by the OCC (collectively, banks) from engaging in short-term proprietary trading of financial instruments and from owning, sponsoring, or having certain relationships with hedge funds or private equity funds (also known as covered funds). The regulations became effective April 1, 2014 and banks must bring their activities and investments into conformance with the regulations by July 21, 2015.

Because of the Volcker Rule's complexity, the OCC developed the interim examination procedures to help examiners understand and focus on the rule's key aspects and to work with OCC-regulated banks to measure progress toward achieving compliance by the end of the conformance period (July 21, 2015). The procedures emphasize:

- Identification of activities subject to the rule;
- Assessment of banks' progress toward establishing their compliance programs;
- Evaluation of banks' plans for conforming covered fund securitization, asset management, and sponsorship activities; and
- Banks' progress toward reporting quantitative metrics.

The OCC states that it will supplement these procedures during the conformance period with in-depth procedures for examiners to test banks' compliance on an ongoing basis. More information is available on the OCC Web site.

On June 10, 2014, the Federal Reserve Board (Federal Reserve) released Frequently Asked Questions (FAQs) related to the Volcker Rule. It is available on the Federal Reserve Web site (under the Banking Information and Regulation tab). The Federal Reserve indicates they have worked with the other agencies charged with implementing the Volcker Rule (including the OCC, Federal Deposit Insurance Corporation, and the Commodity Futures Trading Commission) and substantively identical FAQs should also appear on their Web sites.

Agencies Release Proposed Rulemakings to Shift Start Date of the Capital Plan and Stress Test Cycles

The Federal Reserve Board (Federal Reserve) released a proposed rule on June 12, 2014 that would amend its rules governing the submission of capital plans and the conduct of company run and supervisory stress tests. As proposed, the timing of the capital plan and stress test

cycles would shift by one calendar quarter beginning with the 2015-2016 cycle such that the capital plan and stress test cycle would begin January 1 of each calendar year based on information as of December 31 of the prior year. For the first reporting schedule, the cycle that would have begun on October 1, 2015 based on September 30, 2015 results would shift to a cycle beginning January 1, 2016 based on December 31., 2015 results. The fifteen month transition period has been taken into account. Bank holding companies (BHCs) with $50 billion or more (Large BHCs) would be required to submit their capital plans and stress test results to the Federal Reserve by April 5 (i.e., April 5, 2017 in the first applicable cycle).

BHCs with total consolidated assets of more than $10 billion and less than $50 billion would be required to submit their stress test results to the Federal Reserve by July 31. Savings and loan holding companies (SLHCs) and state member banks with more than $10 billion in total consolidated assets would generally also be required to submit their stress test results to the Federal Reserve by July 31. (Note: the Federal Reserve capital plan rule applies only to Large BHCs; state member banks that are subsidiaries of a Large BHC would submit stress test results with the parent BHC; SLHCs will generally be covered by the stress test rules beginning with the January 1, 2016 cycle and those SLHCs that meet the Large BHC asset threshold would file on the same schedule as Large BHCs.)

During the 15 month transition period, the Federal Reserve states that it would apply the same capital planning and stress testing processes as under the current rule. The rule would also provide that:

- Any BHC that meets the $50 billion Large BHC asset threshold for the first time will be subject to the capital plan rule and to the stress test rule on the first day of the first cycle that begins after the BHC meets the asset threshold;
- Nonbank financial companies supervised by the Federal Reserve would not be subject to the stress test rules until notified by the Federal Reserve;
- BHCs, SLHCs, and state member banks that meet the assets thresholds for the stress test rule on or before March 31 of a given year would be subject to the stress test cycle beginning January 1 of the following year; and
- A BHC, state member bank, or SLHC would be required to use the Basel III Advanced Approaches to calculate its regulatory capital in a capital plan or stress test cycle if it receives notice that it is subject to the Advanced Approaches rule by December 31 of the prior year.

The Federal Reserve's proposed rule includes a number of additional measures to alter the capital planning and stress test processes. Among other things, it would:

- Modify the capital plan rule to limit a Large BHC's ability to make capital distributions to the extent that its actual capital issuances were less than the amount indicated in its capital plan;
- Clarify the application of the capital plan rule to a Large BHC that is a subsidiary of a U.S. intermediate holding company of a foreign banking organization; and
- Make other technical, clarifying changes, such as adding a definition of "BHC stress scenario" to the capital plan rule; permitting, rather than requiring, resubmission of a capital plan following the Federal Reserve's objection; and eliminating prior approval requirements for certain capital actions.

Comments are requested by the Federal Reserve no later than August 11, 2014.

The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) separately released proposed rules (on June 12 and June 16), that would, consistent with the Federal Reserve's proposed rule, shift the timing of the agencies' annual company run stress testing cycles by one calendar quarter beginning with the 2015-2016 stress testing cycle. For each agency, as of January 1, 2016, the annual stress test cycle

would begin on January 1 of each year using information as of December 31 of the prior year. The OCC's rule would require national banks and federal savings associations with more than $50 billion or more in total consolidated assets to submit their stress test results to the OCC and the Federal Reserve by April 7 of each year. National banks and federal savings association with more than $10 billion and less than $50 billion would be required to submit their stress test results by July 31. The FDIC's rule is substantially the same as the OCC's though it is applicable to state nonmember banks and state-chartered savings associations. Covered entities that are consolidated subsidiaries of Large BHCs may elect to conduct their stress test on the same schedule as the parent. The OCC's rule contains a provision that covered institutions would not be required to calculate risk-based capital requirements using the internal ratings-based and Advanced Approaches until December 31, 2015.

Comments on the individual proposals are due to the OCC and FDIC within 60 days following publication in the *Federal Register*.

FDIC Alerts Institutions to Forthcoming Summary of Deposits Survey

The Federal Deposit Insurance Corporation (FDIC) released Financial Institution Letter 29-2014 on June 5, 2014 to remind all FDIC-insured institutions, including insured U.S. branches of foreign banks, that it will be conducting its annual Summary of Deposits (SOD) survey of branch office deposits as of June 30. All institutions with branch offices are required to submit the survey, though institutions with only a main office are exempt. All survey responses are required by July 31, 2014. No filing extensions will be granted.

Federal Reserve Board Governor Tarullo Discusses Corporate Governance Before The Association of American Law Schools

In a June 9, 2014, speech before the Association of American Law Schools, Federal Reserve Board (Federal Reserve) Governor Daniel K. Tarullo offered his views on why special corporate governance measures are needed as part of an effective prudential regulatory system and additional steps that might complement existing prudential regulations. He said the "question arises as to whether fiduciary duties of the boards of regulated financial firms should be modified" to make the boards of financial firms responsive to the "broader interests implicated by their risk-taking decisions."

Governor Tarullo suggested three kinds of regulatory and supervisory measures can better align corporate governance of financial firms with regulatory objectives. These measures include:

- Changing the incentives of a financial firm's decision makers. Stock options or other forms of equity-based reward were originally created to better align management and shareholder interests but Governor Tarullo said these types of incentives have also been found to have intensified the conflict between shareholder and regulator interests. He listed remedies that have been proposed to improve this alignment, including:
  - Making incentive compensation packages more closely reflect the composition of the liability side of a banking organization's balance sheet by including returns on debt instruments, as well as equity, in the calculation of compensation.
  - Deferring a "significant" part of incentive compensation and subjecting it to clawback and forfeiture if the firm becomes insolvent, receives government assistance, or experiences a similar triggering event.
  - Fostering capital market discipline. For example, requiring firms to hold a minimum amount of debt that could be converted to equity upon insolvency. By "identifying

debt instruments as convertible to equity in a context where resolution is a credible option should make the price of those instruments especially sensitive to the relative risk of failure of those firms," said Governor Tarullo. He also said that "requiring systemically important financial firms to issue a meaningful amount of long-term debt would indirectly influence corporate governance by introducing at-risk debt holders as a constituency whose concerns management must monitor and address." The Federal Reserve is expected to issue a proposed rule implementing this type of requirement.

- Placing constraints on decisions made within the firm. An example would be the Federal Reserve's constraint on capital distributions for institutions where the distributions, when added to losses under the hypothesized adverse scenarios projected in the Federal Reserve's annual supervisory stress test, would reduce the firm's capital below certain minimum levels.
- Influencing the processes of corporate governance. "This measure would include efforts to improve the risk-assessment and risk-management capacities of management and boards, rather than to focus specifically on the divergence between shareholder and regulatory interests with respect to risk appetite." He suggested consideration of:
  - Requirements for board members to have the expertise, experience, and time commitment appropriate to manage risks associated with the kinds of activities in which the financial firm engages. He identified three important board positions: the nonexecutive chair or lead director, the head of the risk committee, and the head of the audit committee;
  - Regular discussions between board members and supervisors;
  - Implementation of a "well-conceived" process for board review of major decisions that connects decisions on strategy, risk-appetite, and capital planning; and
  - Clear expectations for board members to spend more time overseeing risk management and control functions.

Governor Tarullo said the strengthening of systems of controls and risk-appetite decision processes improves "the supervisory line-of-sight" into the safety and soundness of financial firms. He also said that well-developed processes for determining risk appetite give supervisors better insight into risks specific to the activities and strategic decisions of each firm, better enabling the supervisors to identify where a firm's risk-taking may not be consistent with microprudential and macroprudential objectives. He further noted that changes in corporate law, as suggested by his remarks, are beyond the authority of the Federal Reserve, but that he hoped discussion among corporate law scholars would "further insights into the key question of how best to respond to the points of divergence between shareholder and regulatory interests in risk-taking by large financial firms."

Enterprise & Consumer Compliance

CFPB Director Cordray Testifies Before the Senate Committee on Banking, Housing and Urban Affairs

Consumer Financial Protection Bureau (CFPB or Bureau) Director Richard Cordray presented the Bureau's fifth semiannual report to Congress and the President on June 10, 2014, before the Senate Committee on Banking, Housing and Urban Affairs. Following his testimony, the Committee members posed a variety of questions to the Director regarding the activities of the Bureau. Highlights of his responses include the following:

- Prepaid cards: The Bureau will miss its self-imposed deadline to issue a rule on prepaid cards in June 2014, but it does expect to issue a proposed rule by the end of summer.
- Payday lenders: The Bureau is taking longer than expected to devise rules for the payday lender market because it wants to ensure the rules are adequately drafted to capture the variety of products offered in the market.
- Student loans: Director Cordray was unclear about whether a rule would be necessary to address issues with student loan servicers, including the issue of releasing cosigners in circumstances such as death.
- Arbitration clauses: The final report on arbitration clauses is expected to be released later this year after which a decision would be made regarding a potential rulemaking to govern these clauses.
- Data collection: The Bureau is collecting data on credit cards and mortgages in order to understand what is happening in the market and inform its rule-writing process. It does not contain personally identifiable information.

CFPB Deputy Director Discusses the Bureau's Toolbox Before ABA Regulatory Compliance Conference

In a June 9, 2014, speech before the American Bankers Association (ABA) Regulatory Compliance Conference, Steve Antonakes, Deputy Director of the Consumer Financial Protection Bureau (CFPB or Bureau), provided an overview of how the Bureau regulates the consumer financial markets using five primary tools – rulemaking, consumer complaint response, supervision, enforcement, and consumer education. He said:

- The Bureau is committed to a "constructive, evidence-based rulemaking process that will keep markets competitive and hold businesses accountable to reasonable and equal standards." He also said the rulemaking tool has been used to restore "back to basics" in both mortgage lending and mortgage servicing, and that the Bureau is currently assessing the need for further regulations in other markets for consumer financial products and services, including debt collection, prepaid cards and payday loans.
- The consumer response tool has been used to help consumers and to identify areas of consumer concern that the Bureau addresses with its supervision and enforcement prioritization process. The Bureau has received over 375,000 complaints to date and debt collection, with about 6,400 complaints a month, is the largest source of complaints.

Mortgage complaint volume averages around 4,300 complaints per month.

- The CFPB's supervision tool will likely widen over the next several months when the Bureau expects to finalize a rule to define "larger participants" in the foreign money transmission market and to propose a rule to define "larger participants" in the auto finance market. The Bureau prioritizes its supervision activities based on an assessment of potential consumer risk and a number of qualitative and quantitative factors, including: the size of a product market; the supervised entity's market share; the potential for consumer harm related to a particular market; and field and market intelligence on issues such as, the quality of a regulated entity's management, the existence of other regulatory actions, default rates, and consumer complaints.
- The Bureau's enforcement tool is used to hold accountable violators of federal consumer financial protection laws. To date, the Bureau has ordered the return of more than $1 billion to consumers and mandated another $2 billion in foreclosure relief.
- The consumer education tool provides consumers with tools and information to develop practical skills and support sound financial decision making, including approaches tailored to address financial decision-making circumstances for specific populations.

Deputy Director Antonakes concluded saying that all of the work carried out in the Bureau's five tools is informed by the efforts of its Research, Markets, and Regulation Division.

President Obama Expands Eligibility for Federal Student Loan Repayment Plan

In a June 9, 2014 executive memorandum, President Barack Obama directed the Secretary of Education to propose regulations that would expand eligibility for the "Pay As You Earn" repayment plan for federal student loans by making the plan available to borrowers who took out loans before October 2007 or who have not borrowed since October 2011.

The "Pay As You Earn" plan caps student loan payments at 10 percent of the student's monthly income. Monthly payments are set on a sliding scale based upon income and any remaining balance is forgiven after 20 years of payments, or 10 years of payments for those in public service jobs. The Department of Education is expected to begin the process to amend its regulations this fall with a goal of making the new plan available to borrowers by December 2015.

The presidential memorandum also directs the Secretaries of Education and Treasury to work together to: ,

- Strengthen incentives for loan contractors to "serve students well," such as renegotiating contracts with federal student loan servicers to tie financial incentives to borrower on-time payments, borrower delinquencies and defaults, and customer satisfaction;
- Ensuring active-duty military get the interest rate caps they are entitled to under the *Servicemember Civil Relief Act*;
- Working with the private sector to promote awareness of repayment options, including working with large tax preparation firms to communicate information about federal student loan repayment options during the tax filing process;
- Using innovative communication strategies to identify borrowers that may be at risk of payment difficulties, such as those that have missed their first payment, have defaulted on small dollar loans, or have left college without completing their education; and
- Promoting stronger collaborations to improve information for students and families, including the development of a pilot project to test the effectiveness of loan counseling resources.

CFPB Publishes Request for Information on Challenges and Opportunities Presented by Mobile Financial Services

The Consumer Financial Protection Bureau (CFPB) announced on June 11, 2014, that it is launching an inquiry into the opportunities and challenges associated with the use of mobile banking services and mobile financial management services. Comments and information provided in response to the CFPB's request for information (RFI) must be submitted to the Bureau no later than September 10, 2014.

Specific areas of interest for the Bureau include:

- Access for the unbanked and underserved;
- Real-time money management;
- Customer service and technical assistance; and
- Privacy concerns and data breaches.

CFPB Charges Title Company with RESPA Violations

The Consumer Financial Protection Bureau (CFPB or Bureau) entered into a consent order with a New Jersey title services company that requires the company to pay a civil money penalty of $30,000 for illegally paying kickbacks for referrals. The Bureau alleges that the title company solicited 20 independent salespeople who had or developed relationships with specific entities that referred consumers to the title company for title insurance and related services in exchange for compensation. The CFPB alleges that the title company offered to pay commissions of up to 40 percent of the title insurance premiums that it received, in violation of the *Real Estate Settlement Procedures Act* (RESPA), which prohibits kickbacks and payment of unearned fees in the context of residential real estate transactions. The company agreed to the consent order with admitting or denying any findings of fact or violations of law.

Paying commissions for referrals is allowed under RESPA if the recipient of the payment is an employee of the company that is paying the referral. In this case, although the individuals received W-2 tax forms, the Bureau's investigation determined that these individuals were independent contractors and not bona fide employees.

House Committee on Financial Services Approves Multiple Bills Proposing Changes to CFPB Operations

The U.S. House of Representatives Committee on Financial Services approved bills on June 11, 2014, that would affect the Consumer Financial Protection Bureau (CFPB or Bureau).

Following are the approved bills and their purpose:

- H.R. 3770, the *CFPB-IG Act of 2013*, passed 39-20, would create a separate, independent inspector general for the CFPB. The CFPB currently shares an inspector general with the Federal Reserve System.
- H.R. 4262, the *Bureau Advisory Commission Transparency Act*, passed by voice vote, 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*, passed by voice vote, would create a small business advisory board at the CFPB.
- H.R. 4539, the *Bureau Research Transparency Act*, passed 32-27, would require that publicly available CFPB research papers be accompanied by all studies, data, and analyses on which the paper was based.
- H.R. 4604, the *CFPB Data Collection Security Act,* passed 32-27, 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. 4811, the *Bureau Guidance Transparency Act,* passed 35-24, would require that the CFPB, in issuing any guidance, provide a public notice and comment period before issuing the guidance in final form, and must make public any studies, data, and other analysis it relied on in preparing and issuing its guidance. The bill would also nullify CFPB Bulletin 2013-02, which offers fair lending guidance to indirect auto lenders, but would clarify that the bill does not prohibit the CFPB from issuing guidance on the same topic in the future, in a manner consistent with the bill's provisions.
- H.R. 3389, the *CFPB Slush Fund Elimination Act*, passed 31-27, would eliminate the Bureau's Civil Penalty Fund and requires the CFPB to remit fines it collects to the U.S. Treasury.
- H.R. 4262, the *Bureau Advisory Opinion Act*, passed by voice vote, 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.
- H.R. 4804, the *Bureau Examination Fairness Act*, passed 33-26, 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

IOSCO Consultation Paper Seeks Good Practices to Reduce Reliance on Credit Rating Agencies (CRAs) in Asset Management

The International Organization of Securities Commissions (IOSCO) published a consultation report on June 4, 2014, entitled *Good Practices on Reducing Reliance on CRAs in Asset Management*.

The purpose of the report is to gather the views and practices of investment managers, institutional investors, and other interested parties in order to develop a set of good practices that would reduce reliance on external credit ratings in asset management. Comments must be received by IOSCO no later than September 5, 2014. A copy of the consultation paper is available on IOSCO's Web site.

IOSCO developed the consultation paper as a result of a 2010 Financial Stability Board (FSB) report entitled *Principles for Reducing Reliance on CRA Ratings*, which concluded with a call for regulators and standard setters such as IOSCO to consider steps for translating the principles into more specific policy action. IOSCO plans to share the good practices that result from its consultation paper with national regulators, investment managers, and investors. IOSCO also

has launched a separate project to identify the good practices of intermediaries with regard to the use of alternatives to credit ratings to assess creditworthiness.

SEC Commissioner Discusses Board Oversight of Cyber Risks at New York Stock Exchange Conference

At a June 10, 2014, New York Stock Exchange conference devoted to board oversight of cyber risks, Securities and Exchange Commission (SEC) Commissioner Luis A. Aguilar emphasized the need for board attention to cyber security measures. He said evidence suggests boards are not spending enough time or devoting sufficient corporate resources to addressing cyber security issues and recommended boards consider the *Framework for Improving Critical Infrastructure Cybersecurity*, released by the National Institute of Standards and Technology (NIST) in February 2014, as a possible roadmap to assessing their companies' cyber security measures. He said that although the framework is voluntary, some commentators have suggested that it "will likely become a baseline for best practices by companies, including in assessing legal or regulatory exposure to these issues or for insurance purposes."

Commissioner Aguilar also recommended additional measures that boards and management can take to strengthen cyber risk oversight, including:

- Requiring mandatory cyber-risk education for directors;
- Ensuring adequate representation on the board by members that understand information technology issues that pose risks to the company;
- Creating a separate enterprise risk committee on the board to foster a "big picture" approach to company-wide risk;
- Having a clear understanding of who at the company has primary responsibility for cybersecurity risk oversight and for ensuring the adequacy of the company's cyber-risk management practices;
- Being prepared to respond rapidly to a cyber attack and the resulting fallout, including whether and how the cyber-attack will need to be disclosed internally and externally to customers and to investors).

House Financial Committee on Services Approves Two Bills Aimed at SEC Regulations

The U.S. House of Representatives Committee on Financial Services approved two measures on June 11, 2014, that would require changes to Securities and Exchange Commission (SEC) regulations:

- H.R.4697, the *Small-Cap Access to Capital Act*, passed 32-27, would require the SEC to revise the definition of a Well-Known Seasoned Issuer (WKSI) to reduce the dollar amount relating to the worldwide market value of outstanding common equity from $700 million to $250 million. It also prohibits an emerging growth company from qualifying as a WKSI.
- H.R. 2629, the *Fostering Innovation Act of 2013*, passed 31-28, requires the SEC to amend Rule 12b-2 so that companies with a public float of either less than $250 million with no annual revenue restriction or between $250 million and $700 million and less than $100 million in annual revenue are deemed "non-accelerated filers" and can therefore take advantage of certain exemptions from the securities laws and the *Sarbanes-Oxley Act of 2002*.

SEC Commissioner Stein Says Financial Reforms Moving Too Slowly in Remarks Before Peterson Institute of International Economics

In remarks made on June 12, 2014 before the Peterson Institute of International Economics, Securities and Exchange Commission (SEC) Commissioner Kara Stein said U.S. regulators are moving too slowly to implement financial reforms. She asked regulators to, "rein in the financial industry's reliance on short-term funding through securities lending and repurchase agreements."

Commissioner Stein said that four years after the passage of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank) efforts to control system risk are "mixed." Pointing first to the progress, she said the Financial Stability Oversight Council (FSOC) and the Office of Financial Research (OFR) are operational, the Volcker Rule is finalized, and the largest banks are submitting resolution plans.

Commissioner Stein said, however, that "far too many of the substantive reforms mandated by the Dodd-Frank Act are not yet implemented," including derivatives reforms, credit rating agency reforms, and the swaps "push out" provision. Also still to be completed are mortgage rules on risk retention and executive compensation rules that discourage excessive risk-taking. She said regulators also need to work together on a global basis to address new and emerging systemic risks.

In closing, she said the SEC must "play a much larger role in addressing systemic risks. We need to be working more closely and effectively with the FSOC and OFR. We need to be improving the stability and resilience of the short-term funding markets. And we need to update and enhance our approaches to capital, leverage, and liquidity for our largest firms and funds. These efforts should not attempt to wring risk out of the capital markets, but we should instead be focused on strengthening the fabric of our entire financial system."

Enforcement Actions

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

- The SEC charged the founder of an Illinois-based investment advisory firm with fraud in connection with the offer and sale of $240,000 in promissory note securities. The investment advisor misappropriated funds and never secured the investments as promised. Without admitting or denying the charges, the investment advisor agreed to settle with the SEC by disgorging the misappropriated investor funds and undisclosed commissions plus interest and pay an additional penalty for a total of approximately $115,000 in monetary sanctions. He also agreed to disbarment from the securities industry, from participating in penny stock offerings, and from appearing before the SEC as an attorney on behalf of any entity regulated by the agency.
- The SEC charged four individuals with insider trading that resulted in collective ill-gotten gains in excess of $12 million. The SEC is seeking permanent injunctive relief, disgorgement of illicit profits plus interest, and financial penalties. The complaint also seeks an officer-and-director bar against one of the individuals.
- The CFTC entered a default judgment and permanent injunction against two New York-based commodity pool operators and their company, alleging they fraudulently solicited more than $1.3 million from investors and distributed false account statements and performance reports to investors, while diverting large amounts of pool participants' funds for their personal use. The CFTC seeks restitution totaling approximately $1 million and a civil monetary penalty of nearly $2.5 million.

Recent Supervisory Actions against Financial Institutions

Last Updated: June 6, 2014

Agency	Institution Type	Action	Date	Synopsis of Action
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,.
Consumer Financial Protection Bureau	Nonbank - Real Estate Company	Consent Order	05/28	The Consumer Financial Protection Bureau entered into a Consent Order with a nonbank financial services company – a real estate brokerage and settlement services company – to address violations of the Real Estate Settlement Procedures Act related to disclosures regarding a consumer's use of the companies affiliated service providers.
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.

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

Please direct subscription inquiries to the Americas' FS Regulatory Center of Excellence:
us-cssfsregulareform@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

ALL INFORMATION PROVIDED HERE IS OF A GENERAL NATURE AND IS NOT INTENDED TO ADDRESS THE CIRCUMSTANCES OF ANY PARTICULAR INDIVIDUAL OR ENTITY. ALTHOUGH WE ENDEAVOR TO PROVIDE ACCURATE AND TIMELY INFORMATION, THERE CAN BE NO GUARANTEE THAT SUCH INFORMATION IS ACCURATE AS OF THE DATE IT IS RECEIVED OR THAT IT WILL CONTINUE TO BE ACCURATE IN THE FUTURE. NO ONE SHOULD ACT UPON SUCH INFORMATION WITHOUT APPROPRIATE PROFESSIONAL ADVICE AFTER A THOROUGH EXAMINATION OF THE FACTS OF THE PARTICULAR SITUATION.

©2014 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity.. The KPMG name, logo and "cutting through complexity" are registered trademarks or trademarks of KPMG International. KPMG LLP, the audit, tax and advisory firm (www.kpmg.com/us), is the U.S. member firm of KPMG International Cooperative ("KPMG International"). KPMG International's member firms have 145,000 professionals, including more than 8,000 partners, in 152 countries.
Printed in the U.S.A. All rights reserved. NDPPS 146154