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The Washington Report
for the week ended July 25, 2014

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Safety & Soundness

FDIC Issues Guidance to S-Corporation Banks Regarding Basel III Capital Conservation Buffer

On July 21, 2014, the Federal Deposit Insurance Corporation (FDIC) issued Financial Institution Letter (FIL) 40-2014 to provide guidance to S-corporation banks regarding how it will evaluate requests to make dividend payments that would otherwise be prohibited by the Basel III capital conservation buffer. Under the Basel III capital rules, a bank is prohibited or limited in the amount of dividends it can pay when its risk-based capital ratios, including the capital conservation buffer, fall below certain thresholds. The capital conservation buffer will be phased in during the years 2016-2018 and will become fully effective in 2019.

S-corporations pass-through income and losses to their shareholders as dividends. The FDIC states that it does not expect many S-corporations to be affected by the dividend limitations solely because of the operation of the capital conservation buffer. Also, because of the phase-in period, it does not expect the issue to present itself for several years.

The FDIC explains that a provision in the Basel III capital rules allows any bank to request approval from its primary federal regulator to make a dividend payment that would not otherwise be permitted by the capital conservation buffer. The regulator may approve the request, if warranted, based on safety-and-soundness considerations. Absent significant safety-and-soundness concerns about the requesting bank, the FDIC states that it generally would expect to approve exception requests by "well-rated S-corporation banks" that are limited to the payment of dividends to cover shareholders' taxes on their portion of an S-corporation's earnings.

FDIC Releases Study on Minority Depository Institutions

The Federal Deposit Insurance Corporation (FDIC) on July 21, 2014, released a study, *Minority Depository Institutions: Structure, Performance and Social Impact*, which looks at how MDIs have: changed over time; performed financially; and served the needs of their communities.

Broadly, the report finds that MDIs:

- Make up 2.6 percent of the 6,730 FDIC-insured financial institutions;
- Underperform non-MDI institutions in terms of standard industry measures of financial performance;
- Often promote the economic viability of minority and communities underserved by mainstream financial institutions;
- Serve markets with a higher share of population living in low- or moderate-income (LMI) census tracts, as well as a higher share of minority populations than do community banks; and
- Originated a larger share of their mortgages to borrowers who live in LMI census tracts and to minority borrowers than did non-MDI community banks.

Federal Reserve Releases 2013 Payments Study Detailed Report

The Federal Reserve Board (Federal Reserve) released *The 2013 Federal Reserve Payments Study Detailed Report* on July 24, 2014. The report provides additional information on the 2013 Payments Study released by the Federal Reserve in December 2013. Updated information regarding the payments landscape includes:

- Results on the intensity of card use by consumers and businesses;
- Further discussion of previously released information on third-party payments fraud;
- New estimates of over-the-counter cash withdrawals and deposits at bank branches and wire transfers made by businesses and consumers; and
- Discussion of emerging and alternative payments likely to replace traditional payments such as cash and checks.

Highlights from the study include:

- Payments have become increasingly card-based and may have replaced check use for certain payments. The increase in the number of total card payments exceeded the decline in the number of check payments from 2009 to 2012.
- The number of credit card payments returned to growth from 2009 to 2012 after showing a slight decline from 2006 to 2009.
- The number of debit card payments increased more than any other payment type from 2009 to 2012.
- Paper check writing continues to persist as a significant portion of noncash payments; interbank processing and clearing of checks are virtually all electronic. As in 2009, almost all checks in 2012 were either cleared by electronic image exchange or converted to ACH payments.
- Increasingly fewer checks enter the banking system as paper: in 2012 about one in seven checks was deposited by accountholders as an electronic image rather than paper.
- The estimated annual number of unauthorized transactions (third-party fraud) in 2012 was 32.3 million, with a value of $6.4 billion.
- In 2012, general-purpose cards had "substantially higher" total unauthorized transactions (third-party fraud) by number and value than ACH and checks.
- General-purpose card fraud rates by number and value were also "substantially higher."
- Among general-purpose cards, single-message (or PIN) debit card transactions (including both purchases and ATM cash withdrawals) in 2012 had the lowest fraud rates by both number and value.
- Among general-purpose card payments in 2012, card-not-present fraud rates were estimated to be approximately three times card-present fraud rates.

As in previous studies, the estimates reported are based on information gathered in three survey efforts: the 2013 Depository and Financial Institutions Payments Survey (DFIPS), the 2013 Network, Processors and Issuers Payments Surveys (NPIPS), and the 2013 Check Sample Survey (CSS).

OCC Guidance Highlights Unique Characteristics of Mutual Savings Associations

On July 22, 2014, the Office of the Comptroller of the Currency (OCC) issued Bulletin 2014-35 to provide guidance on the unique characteristics of mutual savings associations (Mutuals) and the considerations specific to them that factor into the risk-based supervision. The OCC developed the guidance to highlight the key distinctions between federal savings associations (FSAs) organized in the mutual form of ownership and shareholder-owned or stock institutions.

The OCC Bulletin:

- Describes the Mutual governance structure and the rights of Mutual members;
- Outlines the traditional operations of Mutuals; and
- Highlights supervisory considerations in rating Mutuals for each component of the Uniform Financial Institutions Rating System (including, capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk).

BIS Releases International Banking Statistics for Q1 2014

On July 23, 2014, the Bank for International Settlements (BIS) released international banking statistics for the first quarter of 2014 (Q1 2014).

Highlights of the statistics include:

- Between end-December 2013 and end-March 2014, the cross-border claims of BIS reporting banks rose by $580 billion, marking the first substantial quarterly increase since late 2011. The overall increase was broadly spread across countries and sectors.
- Overall cross-border claims on nonbanks, mainly nonbank financial institutions, governments and non-financial corporations, also grew between end-December 2013 and end-March 2014. Cross-border lending to nonbanks in the United States expanded by $73 billion in Q1 2014.
- The largest increase in the Q1 2014 was reported in claims vis-à-vis borrowers in China. This increase took the outstanding stock of cross-border claims on China above $1 trillion at end-March 2014, including inter-office transactions by Chinese and other banks.
- Claims on the rest of Asia, Latin America, Africa, and the Middle East also increased, but at a "more modest pace." By contrast, claims on emerging Europe fell for a fourth consecutive quarter.

Developments in the latest international banking statistics, including breaks in series arising from methodological changes, are summarized in the statistical release, which is available on the BIS Web site. Data are subject to change, and revised data will be released in conjunction with the *BIS Quarterly Review* in September 2014.

Comptroller of the Currency Favors Modifying Certain Charter Restrictions for Federal Savings Associations

At the Joint Mutual Forum on July 24, 2014, Comptroller of the Currency Thomas J. Curry suggested the industry and Congress consider a new approach to the governance of federal savings associations. In particular, he suggested the applicable laws and regulations be amended such that a federal savings association would not be required to change its charter in order to move from a business model that relies on mortgage lending to one that places more emphasis on a mix of commercial loans and consumer credit. "Why must an institution change its charter in order to modify its business plan?" he asked, noting the expense and time consumed in charter conversions.

Comptroller Curry suggested the Qualified Thrift Lender (QTL) test, and the restrictions on commercial and consumer lending that apply to federal savings associations, severely limit their activities and are "ripe for modification." By way of example, he said there were now so many willing participants in the mortgage markets that there is no need to require savings associations to devote a fixed percentage of their balance sheets to the business. He also said that "Most federal savings associations already engage in some level of commercial lending,

so they aren't starting from scratch. The same logic applies to other types of consumer lending."

Legislation would be required to implement such changes and consideration should be given to the need for transition periods to minimize disruptions. Comptroller Curry suggested one way to approach this would be "to build in the same kind of transition periods that now apply to charter conversions." He also acknowledged, "There are other ideas under discussion in Washington, including a proposal to create a mutual national bank charter. I know this proposal is aimed at eliminating activity restrictions while maintaining mutual organization, but again, I don't think it should be necessary to go through the expense of changing charters in order to change a business strategy."

House Committee on Financial Services Holds Hearing to Assess Impact of the Dodd-Frank Act

The House Committee on Financial Services (Committee) conducted a hearing on July 23, 2014, entitled *Assessing the Impact of the Dodd-Frank Act Four Years Later*. The hearing was intended to explore the cumulative effect that the legislation has had on the financial services industry and the economy more generally. In his opening statement, Committee Chair Jeb Hensarling said that "it wasn't deregulation, it was bad regulation that helped lead us into [the] crisis. So if you get the wrong diagnosis you get the wrong remedy. Dodd-Frank has been the wrong remedy, adding incomprehensible complexity to incomprehensible complexity."

Five individuals provided testimony, including Barney Frank, former Chair of the House Committee on Financial Services and one of the principal sponsors of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act). Each of the witnesses shared perspectives on different aspects of the Dodd-Frank Act.

Mr. Frank addressed the law's too-big-to-fail (TBTF) provisions, saying that the resolution process and the Orderly Liquidation Authority requirements will enable a systemically important financial institution (SIFI) to be resolved without the use of taxpayer funds. He also said that asset management firms should not automatically be designated systemic and that the Financial Stability Oversight Council (FSOC) should clearly explain its position on these firms.

Regarding mortgages, Mr. Frank said that it would be "a grave error" for the regulators to equate qualified mortgages (QMs) with qualified residential mortgages (QRMs). He said the statutory intent was to create three categories of mortgages and the proposal to equate QMs with QRMs renders the concept of an "exemption" from risk retention meaningless. The statutory categories include:

- Mortgages that fall below QM standards and are subject to various legal constraints;
- QM mortgages, which meet minimum standards and are subject to risk retention; and
- A separate sub-set of mortgages that are virtually certain to be repaid and would therefore be given an exemption from risk retention.

A witness representing community banks discussed the growing compliance burden for small institutions and asked the Committee members "to look at the unintended consequences of the Dodd-Frank Act." He said, "Unless major changes are made, compliance costs will continue to drive massive consolidation within our industry and limit the ability of our nation's community banks to drive Main Street growth across the country."

A witness from a consulting firm said that the implementation of the Dodd-Frank Act and the rule writing have created “a climate of uncertainty” and “a culture of indecision that is choking the U.S. economy.” He recommended that, at a minimum, lawmakers:

- “Dissolve the FSOC,” which he said, as a regulator comprised of regulators creates “double jeopardy for financial institutions.”
- “Eliminate the ambiguity, inconsistency, and vague terminology in the rules.”
- “Institute protection for those businesses and financial institutions that had nothing to do with causing the crisis”.

A witness representing derivatives end-users said that the impending regulatory burden on derivatives end-users will create higher costs for companies, limiting their growth, harming their international competitiveness, and impacting their ability to create employment. He appealed to the Committee for legislative clarifications regarding:

- Margining of uncleared swaps;
- The application of clearing requirements to centralized treasury units; and
- Cross-border concerns.

Finally, a witness from a public policy research company stated that “the Dodd-Frank Act failed to achieve its stated goals of ending TBTF and reducing the fragility of the U.S. financial system.” He offered the following observations regarding the Dodd-Frank Act:

- There is “no evidence” that the law has ended TBTF and it has “probably” reinforced investor expectations that the largest financial institutions benefit from government safety net protections that are not available to smaller institutions.
- The law grants financial regulators, especially the Federal Reserve Board (Federal Reserve), the FSOC and the Federal Deposit Insurance Corporation (FDIC), “extensive new powers with few constraints while assigning them the duty to ensure financial stability, a concept that is not defined in the legislation.”
- The “mix of ill-defined duty and unconstrained regulatory power is a recipe for over-regulation and slower economic growth.”
- Title II resolution using the FDIC’s single point of entry (SPOE) strategy “does not fix” the TBTF problem. SPOE extends government guarantees to subsidiaries and, ”in many cases, these guarantees will be far larger than those that would be provided under a bankruptcy proceeding” and FDIC bank resolution.
- “Title II and SPOE create new uncertainty regarding which investors will be forced to bear losses when a bank holding company fails. This increased uncertainty will undermine investor confidence and financial stability and could create a political crisis.”
- A change is needed in the deposit insurance laws to stop the FDIC resolution process from creating new TBTF institutions. Amendments should require the FDIC to break-up large banks in a resolution and prohibit whole bank purchase resolutions.

Enterprise & Consumer Compliance

CFPB Proposes Rule to Modify HMDA Reporting Requirements

On July 24, 2014, the Consumer Financial Protection Bureau (CFPB or Bureau) issued a proposed rule to modify the reporting requirements under Regulation C, which implements the *Home Mortgage Disclosure Act* (HMDA). The modifications would add several new reporting requirements and clarify several existing requirements consistent with Section 1094 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. The Bureau is also proposing changes to institutional and transactional coverage under Regulation C. Comments on the proposed rule will be accepted through October 22, 2014.

The proposed changes to the HMDA reportable data requirements include:

- Information about applicants, borrowers, and the underwriting process, such as:
  - Age;
  - Credit score
  - Debt-to-income ratio;
  - Reasons for denial; and
  - The application channel.
- Information about the property securing the loan, such as the:
  - Construction method;
  - Property value;
  - Lien property;
  - Number of individual dwelling units in the property; and
  - Additional information about manufactured and multifamily housing.
- Information about the features of the loan, such as:
  - Additional pricing information'
  - Loan term;
  - Interest rate;
  - Introductory rate period;
  - Non-amortizing features;
  - Type of loan.
- Certain unique identifiers, such as:
  - Universal loan identifier'
  - Property address;
  - Loan originator identifier; and
  - A legal entity identifier for the financial institution.

The Bureau said this information would help regulators determine how the Ability-to-Repay rule is affecting the market, and would also help the Bureau monitor developments in specific markets such as multi-family housing, affordable housing, and manufactured housing.

The CFPB is also proposing to require financial institutions with large reporting volumes (proposed to be a total of 75,000 covered loans, applications, and purchased covered loans for

previous calendar year) to submit HMDA data on a quarterly rather than annual basis. (The CFPB estimates that, based on 2012 data, 28 institutions would be affected by this requirement.)

Finally, the proposed rule would:

- Simplify the institutional coverage requirement to require depository institutions and non-depository institutions that meet all other criteria for a financial institution under Regulation C to submit HMDA data if they originated 25 or more covered loans, excluding open-end lines of credit, the previous calendar year.
- Align HMDA data requirements with the Mortgage Industry Standards Maintenance Organization (MISMO) data standards for residential mortgages, including definitions that are already in use by a significant portion of the mortgage market.
- Expand the types of transactions subject to Regulation C to include all closed-end loans, open-end lines of credit, and reverse mortgages secured by dwellings. Unsecured home improvement loans would not be reported. Loans on unimproved land and temporary financings continue to be excluded from Regulation C.
- Require all institutions to submit HMDA data electronically.

CFPB Publishes Second Annual Financial Literacy Report

The Consumer Financial Protection Bureau (CFPB or Bureau) published its second Annual Financial Literacy Report for Congress on July 21, 2014. The report describes the Bureau’s financial literacy strategy and the activities it has undertaken or continued over the past year to enhance financial literacy and financial capability.

The report indicates that the Bureau’s strategy to improve financial literacy has three dimensions:

- To provide assistance to consumers at specific, important points in their financial lives. The CFPB provides this assistance directly and also works with organizations such as schools, libraries, and workplaces.
- To identify through research effective approaches to financial education and to better define the metrics for success in financial education. Its research focuses on:
    - Determining how to measure financial well-being and identifying the knowledge, skills, and habits associated with financially capable consumers;
    - Evaluating the effectiveness of existing approaches to improving financial capability;
    - Developing and evaluating new approaches; and
    - Engaging in ongoing dialogue with consumers and other stakeholders.
- To reach out to a broad range of stakeholders who can assist the Bureau in reaching the public and fine-tune its approaches. These include other government agencies, the private and non-profit sectors, schools, workplaces, and community organizations.

CFPB Accepting Complaints on Prepaid Cards and Additional Nonbank Products

The Consumer Financial Protection Bureau (CFPB or Bureau) announced on July 21, 2014 that it had begun accepting complaints from consumers encountering problems with prepaid cards and additional nonbank products. It also announced plans to issue a proposed rule aimed at increasing federal consumer protections for general purposed reloadable prepaid cards in the coming months.

Prepaid cards typically have a specific dollar value and can be used at a particular company such as a restaurant or retailer (e.g., gift cards). Prepaid cards also include cards that may be loaded with a consumer's salary or other employee benefits such as healthcare or transit payments. The "additional nonbank products" for which the Bureau is now accepting complaints include pawn and title loans as well as debt settlement and credit repair services, which the Bureau says sometimes charge high fees to consumers. To date, the CFPB has taken several enforcement actions against debt settlement firms.

The Bureau requests that companies named in complaints submitted to the CFPB respond within 15 days and describe the steps they have taken or plan to take to address the complaints. The CFPB expects all but the most complicated complaints to be closed within 60 days.

OIG Audit Finds that CFPB Needs to Improve Security Controls for Cloud Computing

The Office of the Inspector General (OIG) of the Federal Reserve Board (Federal Reserve) published a report on July 17, 2014, on the findings from its review of the information system security controls for the Consumer Financial Protection Bureau's (CFPB or Bureau) cloud computing–based general support system (GSS). The OIG found that the CFPB has taken a number of steps to secure its cloud computing, but improvements are needed to ensure that the Bureau's processes and controls are effective and consistently implemented across all information security areas for the GSS.

The full report, which is not made public because of the sensitivity of the information, includes recommendations to strengthen security controls for the GSS in four information security areas: system and information integrity, configuration management, contingency planning, and incident response. The OIG states that the Bureau's Chief Information Officer concurred with the recommendations and outlined actions that have been or will be taken to address them. The OIG intends to follow up on the implementation of each report recommendation in future audit activities.

Federal and State Agencies Conduct an Enforcement Sweep Against Foreclosure Relief Companies and Individuals; CFPB Issues Related Consumer Advisory

On July 23, 2014, the Consumer Financial Protection Bureau (CFPB or Bureau), the Federal Trade Commission (FTC), and 15 states announced a sweep against multiple foreclosure relief companies and individuals that used deceptive marketing tactics to take advantage of distressed homeowners. The Bureau filed three separate Complaints against companies and individuals that collected more than $25 million in illegal advance fees for services that falsely promised to prevent foreclosures or renegotiate troubled mortgages. The CFPB alleges that the defendants—all law firms or entities associated with law firms—used deceptive marketing in violation of Regulation O (also known as the *Mortgage Assistance Relief Services* (MARS Rule) and the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act). Separately, the FTC filed six lawsuits for violations of the *Federal Trade Commission Act* and the Regulation O, and 32 actions have been filed by the sates.

The illegal practices alleged in the complaints include:

- Collecting fees before obtaining a loan modification;

- Inflating success rates and the likelihood of obtaining a modification;
- Duping consumers into thinking they would receive legal representation; and
- Making false promises about loan modifications to consumers.

Coincident with the lawsuits, the Bureau released a Consumer Advisory intended to help consumers recognize the red flags of foreclosure relief scams, especially when someone is claiming to provide legal help. The Consumer Advisory is also intended to help consumers better understand what it means to authorize a third party to act on their behalf.

Capital Markets & Investment Management

SEC Adopts Money Market Fund Reform Rules

On July 23, 2014, the Securities and Exchange Commission (SEC) adopted amendments to the rules that govern money market mutual funds. The new rules require a floating net asset value (NAV) for institutional prime money market funds, which allows the daily share prices of these funds to fluctuate along with changes in the market-based value of fund assets. They also provide non-government money market fund boards the ability to use liquidity fees and redemption gates during periods of stress to address runs. Under the new rules, institutional prime money market funds (including institutional municipal money market funds) are required to value their portfolio securities using market-based factors and sell and redeem shares based on a floating NAV. These funds no longer will be allowed to use the special pricing and valuation conventions that currently permit them to maintain a constant share price of $1.00. The final rules also include enhanced diversification, disclosure, and stress testing requirements, as well as updated reporting by money market funds and private funds that operate like money market funds.

The final rules will become effective 60 days after publication in the *Federal Register*, however, they also provide a two-year transition period to enable both funds and investors time to fully adjust their systems, operations, and investing practices.

Also on July 23, 2014, the SEC issued a related notice proposing exemptions from certain confirmation requirements for transactions effected in shares of floating NAV money market funds. Comments on this proposal will be accepted through August 19, 2014. Additionally, the SEC re-proposed amendments to the SEC's money market fund rules and Form N-MFP to address provisions that reference credit ratings. The re-proposed amendments would implement section 939A of the *Dodd-Frank Wall Street and Consumer Protection Act,* which requires the SEC to review its rules that use credit ratings as an assessment of credit-worthiness, and replace those credit-rating references with other appropriate standards. Comments on the re-proposal will have a 60-day comment period following publication in the *Federal Register.*

SEC Approves FINRA Rule to Prohibit Conditioning Settlements on Expungement of Information from FINRA's CRD System

The Financial Industry Regulatory Authority (FINRA) announced on July 23, 2014, that the Securities and Exchange Commission (SEC) has approved a new rule that will prohibit firms and registered representatives from conditioning settlement of a customer dispute on, or otherwise compensating a customer for, the customer's agreement to consent to, or not to oppose, the firm's or representative's request to expunge such information from the Central Registration Depository (CRD) system. The rule is intended to protect the integrity of the CRD system and disclosure of material information to investors. FINRA will announce the effective date of the new rule in a Regulatory Notice.

The CRD system is an online registration and licensing system for the securities industry operated by FINRA. It contains information regarding members and registered representatives, including personal information, registration and employment history, as well as disclosure information such as criminal matters, regulatory and disciplinary actions, civil judicial actions, and information relating to customer complaints and disputes. The information FINRA makes public through BrokerCheck is derived from CRD. Brokers who wish to have a customer dispute removed from the CRD system and, thereby, from BrokerCheck, must obtain a court order confirming an arbitration award recommending expungement relief.

FSB publishes a report on Reforming Major Interest Rate Benchmarks

The Financial Stability Board (FSB) published a report on July 22, 2014, that outlines proposals to reform and strengthen the existing major interest rate benchmarks, and recommends additional work on the development and introduction of new, alternative benchmarks. The report was prepared in response to a G20 request, prompted by concerns related to cases of attempted market manipulation and false reporting of global reference rates, as well as with the post-crisis decline in liquidity in interbank unsecured funding markets. The G20 believes uncertainty about the integrity of the reference rates—London Interbank Offered Rate (LIBOR), Euro Interbank Offered Rate (EURIBOR), and the Japanese Interbank Offered Rate (TIBOR), collectively the "IBORs"—could create a potential for systemic risk.

The FSB report, available on the FSB Web site, builds on two earlier reports:

- A review of the standards and principles for sound benchmarks conducted by the International Organization of Securities Commissions' (IOSCO), which includes an assessment of the major interest rate benchmarks against IOSCO's *Principles for Financial Benchmarks;* and
- A report by private sector experts, the Markets Participants Group (MPG) established by the FSB, that were tasked to examine the feasibility and viability of adopting additional benchmark rates and potential transition issues arising in the event of a move to an alternative rate.

Broadly, the FSB supports a multiple-rate approach to the reform of major interest rate benchmarks in line with the following recommendations of the MPG:

- Strengthening existing IBORs and other potential reference rates based on unsecured bank funding costs by underpinning them to the greatest extent possible with transaction data; and
- Developing alternative, nearly risk-free rates. (The FSB notes that members believe that there are certain financial transactions, including many derivatives transactions, that are better suited to reference rates that are closer to risk-free.

To implement the approach, the FSB indicates that the currency groups will work with and guide the private sector to implement new designs and methodologies for the strengthened IBORs and, where currently absent, identify and develop viable near-risk-free rates supported by robust methodologies. The FSB expects that public consultations on the proposed changes will be conducted by the end of 2015, and that at least one IOSCO-compliant risk-free rate will be implemented by the second quarter of 2016.

CFTC Issues Time-Limited No-Action Relief from Electronic Reporting Requirements in the OCR Final Rule

On July 23, 2014, the U.S. Commodity Futures Trading Commission's (CFTC) Division of Market Oversight (DMO) issued a no-action letter that provides additional time for reporting parties to comply with certain reporting requirements of the CFTC's ownership and control final rule (OCR Final Rule). The no-action relief was issued to provide market participants with additional time to build and test systems that comply with the electronic reporting and substantive requirements of the OCR Final Rule.

Subject to certain terms and conditions outlined in the letter, including the condition that reporting parties continue to report via the legacy, non-automated submission methods until the expiration of the granted relief, the DMO granted time-limited, no-action relief for the electronic filing requirements of:

- New Form 102A and New Form 102S until February 11, 2015;
- New Form 102B until March 11, 2015; and
- New Form 40/.40S and New Form 71until February 11, 2016.

The OCR Final Rule was published in the *Federal Register* on November 18, 2013, and requires the electronic submission of trader identification and market participant data on new and updated reporting forms that are intended to better identity participants in futures and swaps markets. The OCR Final Rule requires reporting parties to begin submitting the forms electronically by August 15, 2014.

House Subcommittee Holds Hearing Regarding Oversight of SEC's Division of Corporation of Finance

The House Committee on Financial Services' Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing on July 24, 2014, entitled, *Oversight of the SEC's Division of Corporation Finance*. Keith Higgins, Director of the Securities and Exchange Commission's (SEC or Commission) Division of Corporation Finance was the only witness.

Director Higgins discussed the role of his Division in recommending new rules or changes to existing rules to the Commission, indicating that the Division's recent rule-writing activities have focused on implementation of the mandatory rulemaking provisions of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) and the *Jumpstart Our Business Startups Act* (JOBS Act).

Rulemaking with regard to the *Dodd-Frank Act* has included:

- Final rules on revising the definition of "accredited investor" to exclude the value of a person's primary residence;
- Say-on-pay and say-on-frequency votes for executive compensation;
- Disclosures about representations and warranties and asset-level review of asset-backed securities;

- Compensation committee listing of standards and disclosure;
- Disqualification of felons and others from certain offerings; and
- Specialized disclosure related to mine safety and conflict minerals.

The Division recently recommended two rule proposals for which the SEC is seeking public comment:
- Credit Risk Retention. The SEC is working with multiple federal regulators to jointly develop risk retention rules, as required by Section 941 of the *Dodd-Frank Act*. These rules will address the appropriate amount, form, and duration of required risk retention for securitizers of asset-backed securities.
- Pay Ratio Disclosure. As required by Section 953(b) of the *Dodd-Frank Act*, in September 2013 the SEC proposed rules that would amend existing executive compensation rules to require public companies to disclose the ratio of the compensation of a company's chief executive officer to the median compensation of its employees.

With regard to JOBS Act rulemakings, Director Higgins said the Division is preparing recommendations for final rules to the SEC on "most" of the SEC mandates, including previously proposed rules to:
- Enhance the SEC's ability to assess the development of market practices in Rule 506 offerings and address investor protection concerns that may arise with the use of general solicitation by issuers.
- Implement Title III to provide a new exemption for the offer and sale of securities through crowdfunding, an evolving method to raise capital using the Internet.
- Implement Title IV to build upon existing Regulation A, which exempts small offerings of securities from registration, to enable companies to offer and sell up to $50 million of securities within a 12-month period.

The Division also is preparing recommendations for the SEC to implement the changes made by Titles V and VI with regard to the thresholds for registration and deregistration under Section 12(g) of the *Securities Exchange Act*, which were effective immediately upon enactment of the JOBS Act.

With regard to the SEC's study and review of public company disclosure effectiveness, Director Higgins said the Division is leading the SEC's efforts to update the rules in Regulations S-K and S-X that specify what a company must disclose in its filings. "The goal is to comprehensively review the requirements and make recommendations on how to update them to facilitate timely, material, and more meaningful disclosure by companies to their shareholders." The SEC is initially considering business and financial disclosures required in periodic and current reports. The staff is coordinating with the Financial Accounting Standards Board "to identify ways to improve the effectiveness of disclosures in corporate financial statements and to minimize duplication with other existing disclosure requirements. Subsequent phases of the project will include compensation and governance information included in proxy statements."

OCC Issues Municipal Securities Rulemaking Board Rules Booklet

On July 24, 2014, the Office of the Comptroller of the Currency (OCC) issued the *Municipal Securities Rulemaking Board Rules* booklet of the *Comptroller's Handbook*. This new booklet is part of the *Securities Compliance* series, and consolidates certain guidance from the *Comptroller's Handbook* booklet, *Bank Dealer Activities*, issued in March 1990, and the *Comptroller's Handbook f*or Compliance, *Securities Activities* booklet, issued in September 1991.

The booklet introduces the Municipal Securities Rulemaking Board's (MSRB) rules and interpretive guidance. It also provides guidance to bank examiners and bankers for evaluating compliance with MSRB rules, which govern municipal securities dealers and municipal advisors and their activities, including underwriting, financial advising, dealing in, and trading with or on behalf of customers. The booklet includes recent updates to the MSRB's rules regarding books and records, suitability of recommendations and transactions, time of trade disclosures, prices and commissions, transactions with sophisticated municipal market professionals, and municipal advisors.

Enforcement Actions

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

- The SEC charged a partner of a New York-based investor relations firm with insider trading. In total, the partner's illicit profits and avoided losses amounted to $11,776. The partner agreed to settle the SEC's charges by paying $25,044 in disgorgement, prejudgment interest, and penalties.
- The SEC charged three related entities with misleading investors in a pair of residential mortgage-backed securities (RMBS) securitizations that the firms underwrote, sponsored, and issued. The SEC found that the entities misrepresented the current or historical delinquency status of mortgage loans underlying two subprime RMBS securitizations that "came against a backdrop of rising borrower delinquencies and unprecedented distress in the subprime market." Without admitting or denying the charges, the firms agreed to settle the charges by paying $275 million to be returned to harmed investors.
- The SEC announced a second round of charges against four individuals and three companies that fraudulently conducted a boiler room scheme. Approximately $1.7 million was raised through these companies from more than 110 investors. The defendants have all agreed to settle the SEC's charges, and two of them have also entered into plea agreements in criminal cases relating to matters alleged in the complaint. The SEC is seeking permanent injunctions, disgorgement, civil money penalties, and penny stock bars.
- The SEC charged a bank business unit operating an alternative trading system (ATS) with failing to protect the confidential trading data of its subscribers. The New York-based broker dealer, a subsidiary of the bank, has agreed to pay $5 million to settle the SEC's charges, including a $2.85 million penalty that is the SEC's largest to date against an ATS. According to the SEC's order instituting a settled administrative proceeding, the company allowed an affiliate operating a technology application, known as a smart order router, to access and use confidential information related to the non-displayed orders of the company's subscribers.

Recent Supervisory Actions against Financial Institutions

Last Updated: July 25, 2014

Agency	Institution Type	Action	Date	Synopsis of Action
Federal Reserve Board	State Member Bank	Civil Money Penalty		The Federal Reserve Board issued an Order to Assess Civil Money Penalties against an Iowa-state member bank to address violations of the National Flood Insurance Act.
CFPB, FTC	Law Firms	Complaint	07/23	The Consumer Financial Protection Bureau initiated complaints against three companies and individuals for violations of Regulation O and the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. Related to their collection of more than $25 million in illegal advance fees for services that falsely promised to prevent foreclosures or renegotiate troubled mortgages. The CFPB is seeking compensation for victims, civil fines, and injunctions. Separately, the Federal Trade Commission filed six lawsuits, and states are taking 32 actions against foreclosure relief scammers in a nation-wide sweep.
FDIC	Banking Entities	Settlement	07/14	The Federal Deposit Insurance Corporation, as receiver for three failed banks, announced a $208,250,000.00 settlement with five entities of a large bank related to misrepresentations in the offering documents for 24 residential mortgage-backed securities (RMBS) purchased by the failed banks.
CFPB	Law Firm	Complaint	07/14	The Consumer Financial Protection Bureau initiated a complaint against a law firm for violations of the Fair Debt Collection Practices Act (FDCPA) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) related to its use of use of deceptive court filings and faulty evidence. The CFPB is seeking compensation for victims, a civil fine, and an injunction against the firm and its partners
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.

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