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The Washington Report

for the week ended September 19, 2014

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Safety & Soundness

Senate Committee on Banking, Housing and Urban Affairs Hearing Examines State of Small Depository Institutions

On September 16, 2014, the U.S. Senate Committee on Banking, Housing, and Urban Affairs (Senate Banking Committee) conducted a hearing entitled, *"Examining the State of Small Depository Institutions."* Representatives from the Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), Federal Reserve Board (Federal Reserve), and the Conference of State Bank Supervisors (CSBS) (collectively, the Agencies) testified about the important role small banks play in their communities and the Agencies' effort to "right-size" regulation for community banks. All of the Agencies indicated that they would continue to provide effective supervision tailored for community banks while also seeking to minimize unnecessary regulatory burden and provide technical assistance.

Similarly, the National Credit Union Administration (NCUA) said it tailors its rules for small credit unions and exempts them from rules when possible. The NCUA is supportive of several targeted legislative proposals, such as those to provide parity in insurance coverage for lawyers' trust accounts and raising the cap on member business lending. It asked the Senate Banking Committee to consider providing regulators with appropriate flexibility in any future legislation.

Also speaking at the hearing were representatives from two banking trade groups who asked for relief from "one-size-fits all" regulation. They told the Senate Banking Committee that more must be done to address tax-favored competitors and liquidity access for community banks, and requested that Congress enact bills to provide relief for community banks. Representatives from two credit union trade groups recommended that the Senate Banking Committee encourage the Consumer Financial Protection Bureau (CFPB or Bureau) to use its exemption authority to extend relief to credit unions and others from certain compliance responsibilities, and they asked the Senate Banking Committee to support a risk-based capital regime for credit unions.

Representatives from two consumer groups recommended that regulators:

- Explore additional technical assistance aimed at lowering the fixed costs of regulatory reporting for community banks, possibly with a shared infrastructure for standardized reporting and analysis; and
- Ensure access to a broad, sustainable mortgage market.

House Subcommittee Conducts Hearing on FSOC Oversight

The U.S. House Committee on Financial Services Subcommittee on Oversight and Investigations held a hearing entitled, *"Oversight of the Financial Stability Oversight Council"* on September 17, 2014, in which representatives of the Financial Stability Oversight Council (FSOC or Council) and the U.S. Government Accountability Office (GAO) discussed the operations, policies, and procedures of the FSOC.

The GAO representative stated that, although the FSOC had made progress in meeting recommendations made by GAO in a 2012 report, progress was lacking in several areas:

- A comprehensive, systematic approach to identifying emerging threats to financial stability is needed.
- One of the two data tools developed by the FSOC does not focus on risks to the financial system, while the other remains in a prototype phase.
- Improvements to transparency and accountability are still needed despite the FSOC's approval of a May 2014 revised transparency policy, particularly with regard to keeping detailed meeting minutes.
- Preparation for a mandated January 2016 study to assess the impact of designating nonbanks for enhanced supervision has not begun despite GAO's recommendation that advance planning for retrospective studies is important so that needed data are collected.
- The roles and responsibilities of the FSOC, the Office of Financial Research (OFR), and member agencies' roles have not been defined and practices to coordinate rulemaking among member agencies have not been adopted. The GAO maintains that "action is needed as its past work has shown that the lack of clear roles and coordination can lead to duplication, confusion, and regulatory gaps."

The FSOC representative said the Council has built an open and collaborative organizational framework, and he discussed areas where FSOC has made progress:

- Staff committees that draw upon the collective policy and supervisory expertise of Council members provide opportunities for discussion, collaboration, and coordination.
- Four annual reports were published and submitted to Congress as well as six additional studies or reports.
- A "rigorous and fair process" for evaluating nonbank financial companies for potential designation was established.
- A transparency policy was further expanded in May 2014 to include public statements both before and immediately after Council meetings that provide additional information about the Council's discussions. "Much of the Council's work—particularly with regard to companies under consideration for potential designation—relies on sensitive company-specific information that would not be shared by firms or regulators without an expectation of confidentiality. Further, protection of this information is necessary to prevent destabilizing market speculation."
- A website and notifications to keep the public informed was developed.
- The Council has worked closely with the GAO and Council of Inspectors General on Financial Oversight (CIGFO).
- The Council has actively sought and considered input from external parties.

FSB Provides Update to G20 on Financial Regulatory Factors Affecting the Supply of Long-Term Investment Finance

On September 16, 2014, the Financial Stability Board (FSB) provided a report to G20 finance ministers and central bank governors stating it continues to find "little tangible evidence or data to suggest that global financial regulatory reforms have had adverse consequences on the provision of long-term finance."

FSB has been monitoring the impact of financial regulatory reforms on the supply of long-term investment financing since its initial report to the G20 in February 2013 identifying Basel III, over-the-counter (OTC) derivatives market reforms, and the regulatory and accounting framework for different types of institutional investors as reforms that may affect the provision of long-term investment finance.

The current report further indicates that, because most regulatory reforms are at an early stage of implementation, it is too early to fully assess their impact on the provision of long-term finance or changes in market behavior in response to these reforms. The report notes that regulatory reforms need to be finalized and fully implemented in order to reduce uncertainty in the market and achieve the intended effects. They further state that the regulatory community will remain vigilant to avoid material unintended consequences and to analyze potential impacts as implementation proceeds.

The FSB's monitoring has highlighted a shortage of consistent data on long-term investment finance for analyzing the impact of regulatory reforms. According to the report, this shortage illustrates the potential merits of the project to develop standardized definitions for quantitative indicators of long-term investment finance that could be collected in a comparable fashion across countries.

The FSB intends to continue to monitor impacts and to identify:

- Potential financial regulatory impediments to the promotion of market-based financing;
- The development of new instruments to finance long-term investment;
- The supply of long-term financing by either domestic or foreign intermediaries.

FSB Discusses Vulnerabilities in the Global Financial System and Plans for Completing Core Financial Reforms

The Financial Stability Board (FSB) discussed vulnerabilities affecting the global financial system and reviewed work plans for completing core financial reforms during a meeting in Cairns, Australia, September 17-18, 2014.

Despite improved bank capital and liquidity, the FSB stated that signs of complacency about risks in financial markets are increasing, partly owing to a search for yield during a time of exceptionally accommodative monetary policies. The FSB is also concerned about other vulnerabilities, including asset price volatility, asset valuation dispersion, corporate debt market leverage, and mispriced liquidity risks.

In its policy work, the FSB stated that it has made substantial progress in defining the terms and conditions of total loss absorbing capacity for global systemically important banks (G-SIBs) and in finding solutions to remaining obstacles to cross-border resolution. The FSB expects to deliver a consultative report prior to the November 2014 G20 meeting (Brisbane Summit) and will subsequently issue its proposal for a consultation and quantitative impact study that will be finalized in 2015.

Following the analysis of consultative responses, the FSB, jointly with the International Organization of Securities Commissions (IOSCO), intends to publish a second consultative document on the proposed assessment methodologies for nonbank non-insurer global systemically important financial institutions (NBNI G-SIFIs) by the end of 2014.

The FSB expects to publish a report on the cross-border impacts and global financial stability implications of structural banking reforms being implemented or proposed in individual jurisdictions in October 2014.

The FSB also reviewed progress in meeting the deliverables in the shadow banking roadmap agreed to at the G20 Summit in St. Petersburg in 2013, and will present an updated roadmap in

time for the Brisbane Summit. The FSB also took note of the preliminary results of an initial information-sharing exercise among jurisdictions on their application of the FSB's high-level policy framework for shadow banking entities. The FSB will launch a peer review on the national implementation of the high-level policy framework in 2015.

Progress in resolving the remaining cross-border issues that have arisen in the implementation of over-the-counter (OTC) derivatives reforms was also discussed. Members emphasized the importance of authorities moving quickly to address issues to ensure that the benefits to global financial stability of these reforms are achieved.

Members approved the finalized recommendations for reforms to foreign exchange benchmark practices, which take into account the responses to the public consultation in August 2014. They expect to publish the report at the end of September 2014.

Federal Reserve Releases Summary Report of 2013 Debit Card Transactions

On September 18, 2014, the Federal Reserve Board (Federal Reserve) published a report containing summary information on the volume and value, interchange fee revenue, certain issuer costs, and fraud losses related to debit card transactions in 2013. The report is the third in a series to be published every two years as required by the *Electronic Fund Transfer Act* (EFTA). The Federal Reserve's Regulation II (Debit Card Interchange Fees and Routing), implements the interchange fee provisions of the EFTA. The Federal Reserve stated that it does not plan to propose revisions to its Regulation II interchange fee standard or the fraud-prevention adjustment based on these survey data.

Study highlights include statistics on card usage, interchange fees, network fees, incentives, fraud, and issuer costs.

OCC Hosts Cleveland Workshops on Risk Assessment and Credit Risk

The Office of the Comptroller of the Currency (OCC) announced that it will host two workshops in Cleveland, Ohio on October 28-29, 2014, exclusively for directors of national community banks and federal savings associations supervised by the OCC.

The risk assessment workshop will discuss the OCC's approach to risk-based supervision as well as best practices to identify, measure, monitor, and control risk. Focus areas will include enterprise risk management, capital risk, and cybersecurity. The credit risk workshop focuses on the roles of the board and bank management, current events, emerging industry trends, and credit issues. Both workshops are taught by OCC supervision staff.

Enterprise & Consumer Compliance

CFPB Proposes Rule to Bring Oversight to Large Nonbank Auto Finance Companies

On September 17, 2014, the Consumer Financial Protection Bureau (CFPB or Bureau) issued a proposed rule that would bring under its oversight nonbank auto finance companies that make, acquire, or refinance 10,000 or more loans or leases in a year. The proposed rule will be open for comment for 60 days after it is published in the *Federal Register*.

The proposed rule would amend the regulation defining larger participants of certain consumer financial product and service markets to include a new section to define larger participants of a market for automobile financing, including:

- Grants of credit for the purchase of an automobile, refinancings of such credit obligations, and purchases or acquisitions of such credit obligations (including refinancings);
- Automobile leases and purchases or acquisitions of automobile lease agreements.

The Bureau estimates that about 38 nonbank auto finance companies would be subject to this new oversight. These companies originate approximately 90 percent of nonbank auto loans and leases, and in 2013 provided financing to approximately 6.8 million consumers.

Coincident with the proposed rule, the Bureau released the summer 2014 edition of "*Supervisory Highlights*," detailing discrimination practices by indirect auto lenders uncovered during CFPB supervisory examinations of indirect lenders over the past two years. The report states that the Bureau's nonpublic supervisory actions to address these findings will result in about $56 million in redress for up to 190,000 consumers harmed by discriminatory practices.

To avoid risking liability for violations of the *Equal Credit Opportunity Act* (ECOA), the Bureau recommends that indirect auto lenders:

- Conduct internal monitoring for discrimination;
- Limit discretionary markups; and
- Eliminate dealer discretion for markups.

The Bureau states that supervisory and enforcement resolutions have directed institutions to pay remediation sufficient to address consumer harm, engage in ongoing robust compliance management, and consider the option of adopting compensation and pricing policies not based on discretionary markup. The Bureau intends to continue conducting regular examinations to ensure that indirect auto lenders comply with the ECOA and it implementing regulation, Regulation B, and to promote fair and equal access to credit in the auto lending market.

CFPB Charges For-Profit College Chain with Predatory Lending

On September 16, 2014, the Consumer Financial Protection Bureau (CFPB or Bureau) charged a California-based, publicly traded, for-profit college chain with operating an illegal predatory lending scheme in violation of the *Consumer Financial Protection Act* and the *Fair Debt Collection Practices Act*.

The CFPB complaint alleges that the company, which operates about 100 schools nationwide, has a pervasive culture that allows employees to routinely deceive and illegally harass private student loan borrowers. Based on its investigation, the CFPB alleges that the schools made deceptive representations about career opportunities that induced prospective students to take out private student loans, and then used illegal tactics to collect on those loans. The total outstanding balance of these loans is in excess of $568.7 million.

The Bureau is seeking a permanent injunction, restitution and damages, disgorgement, rescission of loans obtained through the college since July 21, 2011, and civil money penalties.

Separately, in June 2014, the U.S. Department of Education delayed the company's access to federal student aid dollars because of reports of malfeasance.

CFPB Charges Payday Lender with Illegally Accessing Consumer Accounts

On September 17, 2014, the Consumer Financial Protection Bureau (CFPB or Bureau) charged a payday lender with violating the *Consumer Financial Protection Act*, the *Truth in Lending Act* (TILA), and the *Electronic Fund Transfer Act* (EFTA). The CFPB complaint alleges that the payday lender used consumer financial information it purchased from third parties to originate online payday loans without consumers' consent. It further alleges that the Missouri-based payday lender operated through a maze of interrelated companies, many of them incorporated in foreign countries, to deposit payday loans into consumers' bank accounts without their authorization, and then used misrepresentations and false documents to further convince the consumers that they agreed to the online payday loans. According to the complaint, the lenders then used these loans as a basis to make repeated, unauthorized withdrawals from consumers' bank accounts, sometimes taking thousands of dollars in "finance charges" for a $200 or $300 loan that the consumer never agreed to borrow.

The CFPB seeks temporary, preliminary, and permanent injunctions, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement, the appointment of a receiver, and civil money penalties.

Senate Committee on Banking, Housing and Urban Affairs Hearing Considers Protections in Consumer Financial Services

On September 18, 2014, the U.S. Senate Committee on Banking, Housing, and Urban Affairs conducted a hearing entitled, *"Assessing and Enhancing Protections in Consumer Financial Services."*

A representative of an independent, nonprofit, nongovernment organization said the Bureau's research shows similar results to its own in the areas of payday lending, transaction accounts,

and prepaid cards. "Its initial research and enforcement actions on transaction accounts and small dollar loans have been thorough and deliberate. This provides a basis for the Bureau to introduce new rules that eliminate unfair, deceptive or abusive practices while allowing scrupulous financial services companies a fair chance a fair chance to serve customers profitably," he said.

The director for financial resources at a social services organization said the CFPB and Federal Trade Commission (FTC) Web sites "are helpful in our work as we strive to protect consumers by sharing educational tools and keeping us abreast of changes within the consumer protection arena."

To enhance consumer financial services protections, she recommended:

- Limiting the number of short-term loans consumers may access at one time;
- Supporting and promoting community-based financial education; and
- Assisting with incentives to encourage attendance and discourage conflicts of interest related to providing the education.

A representative of a civil rights organization suggested that any rule addressing payday, car title, or other short term lending products should:

- Require the lender to determine the borrower's ability to repay the loan, including consideration of income and expenses;
- Not sanction any series of back-to-back, consecutive, or repeat loans;
- Establish an outer limit on the length of indebtedness that is at least as short as the FDIC's 2005 guidelines of 90 days within a twelve-month period;
- Restrict lenders from requiring a post-dated check or electronic access to a borrower's checking account as a condition of extending credit; and
- Require transparency for fees, penalties, additional interest rates, and pay-off costs.

A law firm partner stated "zeal in enforcing consumer laws, particularly those that do not have well defined standards such as the unfair, deceptive and, with the passage of the *Dodd-Frank Act*, abusive standards that originated in the *Federal Trade Commission Act* and are incorporated into the *Dodd-Frank Act*, can also adversely affect access to consumer services as providers become more reluctant to continue existing products and services and to introduce new ones."

CFPB to Hold Public Forum on Checking Account Screening Policies and Practices

The Consumer Financial Protection Bureau (CFPB or Bureau) will host a public discussion on how checking account screening policies and practices impact consumers. It will be held in Washington, DC, on October 8, 2014. CFPB Director Richard Cordray is scheduled to speak at the event, in addition to presentations from consumer groups, federal and local government officials, and industry representatives. Discussions will focus on current bank account screening practices, the effect these practices have on consumers' ability to acquire and use checking account products, and the availability of financial products and services that meet their needs.

Capital Markets & Investment Management

FINRA Requests Comment on Revised Proposal to Adopt Consolidated Customer Account Statements

On September 16, 2014, the Financial Industry Regulatory Authority (FINRA) announced that it is seeking comment on a revised proposal to transfer, largely unchanged, current National Association of Securities Dealers (NASD) Rule 2340 regarding customer account statements and Incorporated New York Stock Exchange Rule (NYSE) Rule 409, regarding statements of accounts of customers, into the consolidated FINRA rulebook as FINRA Rule 2231. The deadline for comments on the revised proposal is October 31, 2014.

The revised proposal includes changes made in response to comments on the prior proposal that was subsequently withdrawn. The changes are intended to:

- Maintain the quarterly delivery requirement in the current rule; and
- Allow customers to direct the transmission of customer account statements and other documents to third parties, provided the firm sends duplicates of such account statements and other documents directly to the customer.

FINRA Board Approves Series of Equity Trading and Fixed Income Rulemaking Items

On September, 19, 2014, the Financial Industry Regulatory Authority (FINRA) approved a series of proposed rule changes related to high-speed and algorithmic trading. FINRA also approved initiatives to enhance transparency and execution quality in fixed income markets.

FINRA will issue a series of Regulatory Notices on the following regulatory initiatives:

- Registration of associated persons involved in the preparation of algorithmic strategies;
- Expansion of alternative trading system transparency;
- Firm computer system clock synchronization to the National Institute of Standards and Technology's atomic clock;
- Supervision of algorithmic trading strategies;
- Trade sequencing;
- Fixed income pricing disclosure;
- Fixed income quotation information; and
- Recruitment practices.

A full list of the rulemaking items approved by FINRA's board is available on FINRA's Web site.

CFTC Approves Swaps-Related Proposed Rule and Final Rule

On September 17, 2014, the U.S. Commodity Futures Trading Commission (CFTC) released a proposed rule that would address margin requirements for uncleared swaps entered into by swap dealers (SDs) or major swap participants (MSPs). The CFTC states that these margin requirements will protect the safety and soundness of SDs and MSPs and the integrity of the financial system because:

- Requiring parties to collect margin will provide them with collateral to cover the risk posed by counterparties of the open swap positions.
- Requiring parties to post margin will reduce the ability of firms to take on excessive risk.

The rules would apply to SDs and MSPs that are not subject to regulation by the Federal Reserve Board (Federal Reserve), Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Farm Credit Administration (FCA) or the Federal Housing Finance Agency (FHFA) (collectively the prudential regulators). Initial margin requirements would be phased-in starting December 1, 2015 and ending December 1, 2019 from the largest participants to smaller ones. Variation margin requirements would be effective December 1, 2015.

The CFTC states that the proposed rules are similar to the prudential regulators rules' proposed on September 3, 2014, and to international standards issued in 2013 by the Bank for International Settlements Basel Committee on Banking Supervision (Basel Committee) and the International Organization of Securities Commissions (IOSCO).

Also on September 17, 2014, the CFTC adopted a final rule on *Exclusion of Utility Operations-Related Swaps with Utility Special Entities from De Minimis Threshold for Swaps with Special Entities*. The rule amends the definition of the term "swap dealer" to permit a person to exclude certain types of swaps entered into with special entities that are utilities from the $25 million special entity de minimis threshold above which a person dealing in such swaps must register as a swap dealer.

The amendments:

- Define the term "utility special entity" to mean a special entity such as a state or local government, a government agency, or an instrumentality, department or corporation established by a state, that:
  - Owns or operates electric or natural gas facilities, electric or natural gas operations or anticipated electric or natural gas facilities or operations;
  - Supplies natural gas or electric energy to other utility special entities;
  - Has public service obligations or anticipated public service obligations under federal, state or local law or regulation to deliver electric energy or natural gas service to utility customers; or
  - Is a federal power marketing agency as defined in Section 3 of the *Federal Power Act;*
- Define the term "utility operations-related swap" to mean a swap:
  - To which one of the parties is a utility special entity;
  - That the utility special entity is using to hedge or mitigate commercial risk (as defined in Regulation 50.50(c));
  - That is related to an exempt commodity or to an agricultural commodity insofar as the agricultural commodity is used for fuel for generation of electricity, or is otherwise used in the normal operations of the utility special entity; and
  - That is an electric energy or natural gas swap, or that is associated with the generation, production, purchase or sale of natural gas or electric energy, the supply

of natural gas or electric energy to a utility special entity, or the delivery of natural gas or electric energy service to customers of a utility special entity; fuel supply for the facilities or operations of a utility special entity; compliance with an electric system reliability obligation; or compliance with an energy, energy efficiency, conservation, or renewable energy or environmental statute, regulation, or government order applicable to a utility special entity.

- Permit a person to rely upon a written representation by the utility special entity that it is a utility special entity and that the swap is a utility operations-related swap and to require the person to keep any such representation in accordance with the general recordkeeping requirements of Regulation 1.31; and
- Delete a notice requirement that had been included in the proposed version of the rule for persons who seek to exclude utility-operations related swaps from their special entity de minimis threshold calculation.

SEC and SBA to Host Events on Small Business Capital Raising Under the JOBS Act

The Securities and Exchange Commission (SEC) announced that it will partner with the U.S. Small Business Administration (SBA) to jointly host events to inform small business owners and entrepreneurs about new options to raise capital under the *Jumpstart Our Business Startups Act* (JOBS Act), such as advertising certain private offerings and allowing firms to offer and sell securities through crowdfunding. The SEC is continuing to develop rules to implement JOBS Act provisions.

The events are designed for existing and aspiring small businesses. Representatives from the SEC's Office of Small Business Policy in the Division of Corporation Finance, the Office of Investor Education and Advocacy, and the Office of Minority and Women Inclusion will co-host the events with the SBA's Office of Investment and Innovation and the SBA's Office of Entrepreneurial Development. The events will highlight additional ways small businesses may seek to raise funds under current and proposed SEC rules. The first event is scheduled for September 25, 2014, at the University of Baltimore.

Enforcement Actions

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

- The SEC charged a Tennessee-based company with accounting fraud for repeatedly reporting false revenues from the company's foreign operations in order to meet financial targets and prop up its stock price. The SEC also alleged that U.S. managers learned of the accounting fraud, but failed to take adequate steps to investigate and disclose it to investors. Without admitting or denying the charges, the company agreed to pay back $18 million in illicit profits that will be distributed to persons harmed by the company's fraud. It also agreed to a permanent injunction. The SEC's case continues against five former company executives and a former audit committee chair.
- The SEC announced new sanctions in a continuing enforcement initiative uncovering certain hedge fund advisers and private equity firms that have illegally participated in an offering of a stock after short selling it during a restricted period. The SEC's investigations found that 19 firms and one individual trader charged in these latest cases engaged in short selling of particular stocks shortly before they bought shares from an underwriter, broker, or dealer participating in a follow-on public offering. Each firm and the individual

trader have agreed to settle the SEC's charges and pay a combined total of more than $9 million in disgorgement, interest, and penalties.

- The SEC charged an employee of an international law firm with insider trading ahead of several mergers and acquisitions involving firm clients being advised on the deals. The SEC alleges that the individual made more than $300,000 in illicit profits by trading in advance of merger announcements. In a parallel action, the U.S. Attorney's Office announced criminal charges against the individual. The SEC is seeking disgorgement, prejudgment interest, and civil penalties.
- The SEC charged a New York-based high frequency trading firm with violating the net capital rule that requires all broker-dealers to maintain minimum levels of net liquid assets or net capital. The firm's former chief operating officer is charged with causing the extensive violations. To settle the SEC's charges, the firm agreed to pay a $16 million penalty, the largest ever for violations of the net capital rule. The previous high was $400,000 in 2004. The former chief operating officer agreed to pay a $150,000 penalty to settle the charges against him.
- The SEC received an emergency asset freeze against a foreign company in connection with its operation of a Florida-based Ponzi scheme. The SEC's complaint alleged that the company and its now-deceased principal falsely promised investors safe, guaranteed returns while engaging in an offering fraud and Ponzi scheme. The SEC's complaint also names the principal's widow and another company controlled by the principal as relief defendants because they received investor funds. The SEC is seeking repatriation of funds, disgorgement with prejudgment interest, and sworn accounting of all proceeds received.
- The SEC charged a Washington-based investment advisory firm with engaging in more than 1,100 principal transactions through its affiliated broker-dealer without informing clients or obtaining their consent and with distributing false and misleading advertisements to investors. The firm agreed to pay nearly $600,000 to settle the SEC's charges. The firm's CEO was charged with violations of the compliance and reporting provisions of the *Investment Advisers Act* and agreed to pay a $50,000 penalty to settle individual charges.
- The SEC charged eight individuals for their roles in an alleged pump-and-dump scheme involving a California-based penny stock company that has repeatedly changed its name and purported line of business over the past several years. The SEC is seeking a permanent injunction, disgorgement, financial penalties, penny stock bars, and officer-and-director bars. The SEC investigation is continuing. In a parallel action, the U.S. Attorney's Office and the Federal Bureau of Investigation announced criminal charges against the two individuals who orchestrated the scheme.
- The SEC charged a New York man with facilitating a $5.6 million insider trading scheme in which he acted as a middleman who passed information between a law firm employee and his stockbroker. The SEC alleges that the scheme was deliberately structured to avoid detection. In a parallel action, the U.S. Attorney's Office announced criminal charges against the middleman. The U.S. Attorney previously brought criminal actions against the stockbroker and law firm employee. The SEC is seeking a permanent injunction, disgorgement, and civil money penalties.
- The CFTC issued an Order filing and simultaneously settling charges against a New York-based CFTC-registered futures commission merchant with failing to supervise its officers, employees, and agents that opened and handled accounts in the name of a family of companies, which purported to operate a hedge fund based in a foreign "high risk jurisdiction." By failing to follow customer identification procedures and by failing to adequately monitor and enforce trading limits applicable to those accounts, they did not identity a multimillion-dollar Ponzi scheme. The Order requires the company to pay a $280,000 civil monetary penalty and to disgorge associated commissions.

- The CFTC entered a consent Order settling charges brought against a resident of a foreign country for attempting to manipulate the price of futures contracts traded on a U.S. exchange. The Order requires the individual to pay a $750,000 civil monetary penalty, bans him permanently from trading in the settlement period for the last day of trading in all CFTC-regulated products, and permanently prohibits him from registering with the CFTC.
- The CFTC charged an Ohio-based commodity pool operator (CPO) with fraud for operating a multi-million-dollar Ponzi scheme. According to the complaint, the CPO solicited at least $116 million from pool participants, depositing approximately $4.7 million of the funds into futures accounts. The complaint further alleges that he misappropriated pool participant funds for personal and other business uses, issuing false account statements to pool participants. The CPO pleaded guilty in a related criminal case. In its continuing litigation, the CFTC seeks a return of ill-gotten gains, restitution, civil monetary penalties, trading and registration bans, and permanent injunctions.
- The CFTC entered an Order filing and simultaneously settling charges against a Florida resident and his company for engaging in illegal, off-exchange retail commodity transactions and for operating as an unregistered futures commission merchant (FCM). The Order imposes permanent registration and trading bans on him and his company and requires him and his company jointly to pay restitution totaling $1,048,807 and a civil monetary penalty of $140,000.

Recent Supervisory Actions against Financial Institutions

Last Updated: September 19, 2014

Agency	Institution Type	Action	Date	Synopsis of Action
Federal Reserve Board	State member bank	Written agreement	09/19	The Federal Reserve entered into a written agreement with a Massachusetts-based state member bank to address an unauthorized cash dividend to shareholders. The Federal Reserve objected to the capital plan the bank submitted in January 2014.
CFPB	Nonbank Payday Lender	Complaint	09/17	The Consumer Financial Protection Bureau charged a Missouri-based payday lender with originating online payday loans without consumers' consent and debiting fees from their checking accounts in violation of the *Consumer Financial Protection Act*, the *Truth in Lending Act*, and the *Electronic Fund Transfer Act* (EFTA).
CFPB	Nonbank For-Profit Educational Institution	Complaint	09/16	The Consumer Financial Protection Bureau charged a California-based, publicly traded, for-profit college chain with operating an illegal predatory lending scheme in violation of the *Consumer Financial Protection Act* and the *Fair Debt Collection Practices Act*. .
Federal Reserve Board	State Member Bank	Civil Money Penalty	09/11	In two separate instances, the Federal Reserve Board issued an Order of Assessment of Civil Money Penalty against an Ohio-based state member bank to address violations of the *National Flood Insurance Act*.
Federal Reserve Board	State Member Bank	Consent Cease and Desist	09/09	The Federal Reserve Board entered into a Cease and Desist Order Upon Consent of a Pennsylvania-based state member bank to address deficiencies related to the bank's firmwide compliance program for Bank Secrecy Act/anti-money laundering requirements, including board oversight, BSA/AML compliance program reviews at the firmwide and bank levels, customer due diligence, suspicious activity reporting, and transaction review.
CFPB	Nonbank Debt Settlement Payment Processor	Consent Order	08/25	The Consumer Financial Protection Bureau issued a Consent Order against a debt settlement payment processor for allegedly helping other companies to collect illegal upfront fees from consumers in violation of the *Consumer Financial Protection Act* and the *Telemarketing and Consumer Fraud and Abuse Prevention Act*. The Bureau is seeking $6 million in relief to consumers as well as a $1 million civil penalty.
FTC	Nonbank Debt Relief and Credit Repair entity	Complaint	08/22	The Federal Trade Commission asked a federal court to shut down a an illegitimate debt relief and credit repair program that made false claims it was provided and funded by the federal government. The FTC charged the operators with two counts of violating the FTC Act's prohibition on deceptive acts or practices, as well as two counts of violating the *Credit Repair Organizations Act's* prohibitions on collecting advance fees before providing credit repair services.

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