KPMG
cutting through complexity

The Washington Report

for the week ended April 10, 2015

In This Issue

Safety & Soundness

Federal Reserve Adopts Final Rule to Expand Applicability of its Small Bank Holding Company Policy Statement 1

Agencies Release FAQs Regarding Regulatory Capital Rule 1

Enterprise & Consumer Compliance

CFPB and FTC Each Charge Debt Collectors with Operating Fraudulent Collection Scheme 2

CFPB Fines Nonbank Mortgage Lender for Deceptive Acts and Practices 2

Insurance

NAIC and Financial Services Agency of Japan Advance Regulatory Cooperation 3

Capital Markets & Investment Management

Enforcement Actions 3

Safety & Soundness

Federal Reserve Adopts Final Rule to Expand Applicability of its Small Bank Holding Company Policy Statement

On April 9, 2015, the Federal Reserve Board (Federal Reserve) adopted final amendments (final rule) to expand the applicability of its Small Bank Holding Company Policy Statement (Regulation Y, Appendix C) and to apply it to certain savings and loan holding companies. The final rule, which is unchanged from the proposed rule released in February 2015:

- Raises from $500 million to $1 billion the asset threshold to qualify for the Policy Statement; and
- Expands the scope of companies eligible under the Policy Statement to include savings and loan holding companies.

Qualifying firms continue to be required to meet certain qualitative requirements, including those pertaining to nonbanking activities, off-balance sheet activities and publicly-registered debt and equity.

The Policy Statement is intended to facilitate the transfer of ownership of small community banks and savings associations by allowing their holding companies to operate with higher levels of debt than would normally be permitted. While holding companies that qualify for the Policy Statement are excluded from consolidated capital requirements, their depository institution subsidiaries continue to be subject to minimum capital requirements.

In addition to the amendments to the Policy Statement, the Federal Reserve also adopted final conforming amendments to Regulations Y and LL, which govern the operations of bank holding companies and savings and loan holding companies, respectively, as well as to Regulation Q, which governs the Federal Reserve's regulatory capital rules.

The final rule is effective 30 days after publication in the *Federal Register*.

Agencies Release FAQs Regarding Regulatory Capital Rule

The Office of the Comptroller of the Currency, the Federal Reserve Board and the Federal Deposit Insurance Corporation (FDIC) (collectively, the Agencies) jointly released answers to frequently asked questions (FAQs) regarding the regulatory capital rule on April 6, 2015. The FAQs are not official rules or regulations but rather the Agencies' interpretations of the rule based on the facts and circumstances presented. The FAQs are intended to be a resource for bankers should questions arise during implementation of the revised capital rule.

The FAQs address the following topics:

- Definition of capital;
- High-volatility commercial real estate (HVCRE) exposures;
- Other real estate and off-balance-sheet exposures;
- Separate account and equity exposures to investment funds;
- Qualifying central counterparty questions;
- Credit valuation adjustment questions; and
- Other miscellaneous questions.

The revised capital rule took effect January 1, 2015, for most banking organizations, subject to a transition period for several aspects of the rule.

Also on April 6, 2015, the FDIC released Financial Institution Letter (FIL) 15-2015 to remind institutions that the Consolidated Reports of Condition and Income (Call Report) Schedule RC-R, Regulatory Capital, has been revised beginning with the March 31, 2015 report date (which must be received by April 30, 2015, except for certain institutions with foreign offices). The new Schedule includes revised definitions of the components of regulatory capital and the standardized approach for calculating risk-weighted assets.

Enterprise & Consumer Compliance

CFPB and FTC Each Charge Debt Collectors with Operating Fraudulent Collection Schemes

On April 8, 2015, the Consumer Financial Protection Bureau (CFPB or Bureau) announced that it charged a Georgia-based debt collection company, its operators and service providers with violations of the *Consumer Financial Protection Act* (CFPA) and the *Fair Debt Collection Practices Act* (FDCPA) in connection with unlawful collection of purported debt. The Bureau alleges the debt collectors used threats, intimidation and harassment to unlawfully collect millions of dollars of debt that was not owed.

Also named in the complaint are several related entities and the individuals who operated them. The Bureau alleges that these entities enabled the debt collectors' fraudulent activity by accepting consumers' payments and providing the telemarketing service that enabled the debt collectors to deliver threatening and false statements to consumers in telephone messages.

The court entered a preliminary injunction to halt the misconduct and freeze the assets of the individual defendants and their businesses. The CFPB seeks a permanent injunction, restitution, disgorgement and civil money penalties.

In a separate and unrelated action, the Federal Trade Commission and the Illinois Attorney General's Office obtained a court order temporarily halting an Illinois-based debt collection scam. They charged the operators of the scam with illegally using threats and intimidation tactics to coerce consumers to make pay against payday loan debts they either did not owe, or did not owe to the defendants, in violation of the FDCPA and Illinois state laws.

CFPB Fines Nonbank Mortgage Lender for Deceptive Acts and Practices

On April 9, 2015, the Consumer Financial Protection Bureau (CFPB or Bureau) charged a nonbank California-based mortgage lender for deceptive mortgage advertising practices that violated the *Consumer Financial Protection Act* and the Mortgage Protection Rule. The Bureau alleges the lender's advertisements led consumers to believe that the company was affiliated with the U.S. government, a violation of the Mortgage Acts and Practices Advertising Rule. It also charged the lender with failing to include required disclosures regarding interest rates and monthly payments as required by the *Truth in Lending Act.* Without admitting or denying the Bureau's findings, the mortgage lender settled the charges and agreed to pay a civil penalty of $250,000.

Insurance

NAIC and Financial Services Agency of Japan Advance Regulatory Cooperation

On April 6, 2015, the National Association of Insurance Commissioners (NAIC) and the Financial Services Agency of Japan (FSA-) released a joint statement following their third NAIC-FSA Insurance Regulatory Dialogue where regulatory issues of mutual concern were discussed including international group supervision and the development of global capital standards.

The statement highlights the recent addition of the FSA to the NAIC List of Qualified Jurisdictions, making reinsurers licensed and domiciled in Japan eligible for reduced reinsurance collateral requirements under the NAIC's Credit for Reinsurance Model Law. Also addressed in the statement was the use of International Association of Insurance Supervisors (IAIS) Multilateral Memorandum of Understanding as the internationally accepted standard for global information sharing among insurance regulators.

Capital Markets and Investment Management

Enforcement Actions

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

- The SEC charged twelve companies and six individuals with defrauding investors of more than $12.4 million in a scheme involving licensing applications to the Federal Communications Commission (FCC). According to the SEC's complaint, two of the individuals orchestrated the offering fraud through an Arizona-based company they founded and managed. The other four individuals owned and managed the other eleven companies that were named as fundraising entities for the Arizona-based company.
- The SEC charged two Florida residents and three firms they managed with operating a Ponzi scheme that raised more than $31 million from investors. The SEC is seeking a permanent injunction, disgorgement and civil money penalties. The SEC is also seeking disgorgement from four other entities that were owned or operated by the individuals and which were named as relief defendants based on their receipt of investor funds.
- The SEC charged a California-based firm and its owner with violating the antifraud, securities registration and broker-dealer registration provisions of the federal securities laws in the sale of "life settlement" investments. Also named in the complaint are an Ohio-based firm that held and serviced the insurance policies and five sales agents. The SEC is seeking permanent injunctions, civil money penalties and disgorgement with interest and penalties.
- The SEC charged an Oregon-based company with violating the Foreign Corrupt Practices Act (FCPA) by financing personal travel for foreign government officials who played key roles in decisions to purchase its products. The SEC alleges that the company earned more than $7 million in profits from sales influenced by improper travel and gifts. Without admitting or denying the findings, the company agreed to settle the charges and pay more than $9.5 million in disgorgement, prejudgment interest and penalties.

- The SEC charged the operators of a South Florida-based microcap scheme, including three boiler room brokers, for defrauding 400 investors out of $11 million. The SEC is seeking disgorgement, prejudgment interest and financial penalties.
- The SEC charged the former controller of an Illinois-based company's Japanese subsidiary for engaging in unauthorized equity trading in the company's brokerage accounts that caused more than $110 million in trading losses. The individual, who is also charged with manipulating accounting records to avoid detection, admitted wrongdoing and accepted a permanent officer and director bar. Possible monetary sanctions will be determined by the court. Without admitting or denying the SEC's findings, the company settled charges that it had internal control failures, did not keep accurate financial records and made inaccurate periodic financial reports.
- The CFTC announced that a U.S. District Court entered a Consent Order for permanent injunction against Texas-based commodity pool operators (CPOs), requiring them jointly to pay a $4.15 million civil monetary penalty and restitution of $3,365,888. The Order also imposes permanent trading and registration bans. The CPOs had been charged with fraud and misappropriation of pool participants' funds while operating a fraudulent commodity pool. In a related criminal action, one CPO was sentenced to eight years in prison for mail fraud.

Contact Us

This is a publication of KPMG's Financial Services Regulatory Risk Practice and KPMG's Americas FS Regulatory Center of Excellence

John Ivanoski, Partner, National Leader, Regulatory Risk jivanoski@kpmg.com

Hugh Kelly, Principal and National Lead, Bank Regulatory Advisory hckelly@kpmg.com

Amy Matsuo, Principal and National Lead, Enterprise-wide Compliance & Consumer Regulatory amatsuo@kpmg.com

Tracy Whille, Principal and National Lead, Capital Markets and Investment Management Regulatory twhille@kpmg.com

Philip Aquilino, Principal, Bank Regulatory Safety & Soundness paquilino@kpmg.com

Pamela Martin, Managing Director and Lead, Americas FS Regulatory Center of Excellence pamelamartin@kpmg.com

Please direct subscription inquiries to the Americas FS Regulatory Center of Excellence:
regulationfs@kpmg.com

Earlier editions of The Washington Report are available at:
www.kpmg.com/us/thewashingtonreport

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
Paul Cardon pcardon@kpmg.com

Insurance Regulation
Matthew McCorry memccorry@kpmg.com

Investment Management
John Schneider jjschneider@kpmg.com

Safety & Soundness, Corporate Licensing & Governance, and ERM Regulation
Greg Matthews gmatthews1@kpmg.com