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Safety & Soundness

FFIEC Releases Statements Regarding Compromised Credentials and Destructive Malware

On March 30, 2015, the Federal Financial Institutions Examination Council (FFIEC) released two statements regarding ways that financial institutions can identify and mitigate cyber-attacks that compromise user credentials or use destructive software (malware):

- FFIEC Statement on Destructive Malware
- FFIEC Statement on Compromising Credentials

The FFIEC guidance recommends that institutions:

- Securely configure systems and services;
- Review, update and test incident response and business continuity plans;
- Conduct ongoing information security risk assessments;
- Perform security monitoring, prevention and risk mitigation;
- Protect against unauthorized access;
- Implement and test controls around critical systems regularly;
- Enhance information security awareness and training programs; and
- Participate in industry information-sharing forums, such as the Financial Services Information Sharing and Analysis Center.

Members of the FFIEC include the Federal Reserve Board, the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the State Liaison Committee.

OCC Revises Guidance for Subordinated Debt

On April 3, 2015, the Office of the Comptroller of the Currency (OCC) issued Bulletin 2015-22 to announce it is revising current OCC guidance for subordinated debt issued by national banks. The OCC stated that it is replacing appendix A of the "Subordinated Debt" booklet of the *Comptroller's Licensing Manual* with new "Guidelines for Subordinated Debt." The new guidelines apply to all subordinated debt issued by national banks and federal savings associations, regardless of whether the subordinated debt is included in regulatory capital.

The OCC also is revising the "Sample Subordinated Note" in appendix B of the "Subordinated Debt" booklet and replacing it with two sample notes for national banks. The first note provides sample language for a subordinated debt note included in tier 2 capital, and the second provides sample language for a subordinated debt note that is not included in tier 2 capital. The sample notes apply only to subordinated debt issued by a national bank because there is no pre-existing sample note for federal savings associations. The OCC indicates that it is developing sample notes for federal savings associations and expects to publish the sample notes in the near future. The new guidelines and sample notes are effective for subordinated debt issued on or after April 3, 2015.

Enterprise & Consumer Compliance

OCC Issues Bulletin Regarding Extension of Time Period for Certain Protections under the SCRA Act

On April 1, 2015, the Office of the Comptroller of the Currency (OCC) issued OCC Bulletin 2015-21 to inform OCC-supervised institutions of the temporary extension of certain protections under the *Servicemembers Civil Relief Act* (SCRA), as amended in December 2014 by the *Foreclosure Relief and Extension for Servicemembers Act of 2014*.

The Bulletin explains:

- The SCRA amendments continue temporary provisions that extend protections to servicemembers, under certain conditions, related to the sale, foreclosure, or seizure of mortgaged property, or the filing of a legal action to enforce a mortgage obligation or other similarly secured obligation, within one year following the servicemember's period of military service.
- The temporary extension expires on December 31, 2015.
- The U.S. Department of Housing and Urban Development updated its SCRA Notice Disclosure to reflect the extensions.

CFPB Charges Debt Collection Operation for UDAAP Violations

On March 30, 2015, the Consumer Financial Protection Bureau (CFPB or Bureau) announced that it charged a California-based, nationwide debt collection corporation, its related entities and its chief executive officer (CEO) with violating the *Fair Debt Collection Practices Act* (FDCPA) and the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank). The Bureau alleges they created the false impression that their communications were from a state or district attorney's office and deceptively threatened criminal prosecution in order to intimidate borrowers into paying debts for bounced checks. The Bureau also alleges the corporation and its entities misled borrowers into believing that they must pay to enroll in a financial education program to avoid criminal charges.

Under a proposed court order, the corporation, its related entities and the CEO will settle the CFPB's charges without admitting or denying the charges. The settlement includes a permanent injunction and the payment of restitution, disgorgement and a $50,000 civil money penalty.

FTC Takes Action Against Marketers of Fraudulent Mortgage and Debt Relief Service Providers

On April 3 2015, the Federal Trade Commission (FTC) announced that a marketing group that helped promote a Utah-based home loan modification scheme will be banned from the mortgage relief and debt relief industries as a result of a court settlement. The FTC alleges that the group violated the law by fraudulently promoting a loan modification program that required consumers to pay fees of $500 to $3,900 for mortgage relief services. The FTC filed a complaint against the marketers and several closely associated companies and individuals as part of an enforcement sweep targeting operations that fraudulently promoted loan modifications to consumers. The FTC alleges the marketers prepared and mailed ads for mortgage relief services that were designed to look as if they were coming from lawyers in the recipients' states.

Under the proposed settlement, the marketing group is prohibited from violating the FTC's Telemarketing Sales Rule and is required to have competent and reliable evidence to support claims made about the benefits, performance or efficacy of

any financial product or service. The proposed order imposes a judgment of $28.6 million against the marketing group and requires the company to turn over its financial accounts to the FTC.

CFPB Releases Toolkit for Homebuyers

On March 31, 2015, the Consumer Financial Protection Bureau (CFPB or Bureau) released a toolkit entitled "Your home loan toolkit, a step-by-step guide." Developed as part of the CFPB's "Know Before You Owe" mortgage initiative, the toolkit is intended to help consumers take advantage of the new Loan Estimate and Closing Disclosure forms that lenders are required to provide beginning on August 1, 2015. The toolkit replaces an existing booklet that creditors currently must provide to mortgage applicants, which was initially developed by the Department of Housing and Urban Development.

Capital Markets and Investment Management

OCC Releases *Quarterly Report on Bank Trading and Derivatives Activity*

On April 1, 2015, the Office of the Comptroller of the Currency (OCC) released the OCC's Quarterly Report on Bank Trading and Derivatives Activities. Highlights of the report indicate:

- Insured U.S. commercial banks and savings institutions reported trading revenue of $4.4 billion in the fourth quarter of 2014, down $1.3 billion, or 22 percent, from $5.7 billion in the third quarter. For all of 2014, trading revenue totaled $22.7 billion, up 3 percent ($0.6 billion) over 2013 totals.
- Credit exposure from derivatives increased in the fourth quarter. Net current credit exposure (NCCE) increased 11.7 percent ($46.5 billion) quarter-over-quarter.
- Trading risk, as measured by Value-at-Risk (VaR), increased slightly in the fourth quarter. Average VaR across the top five dealer banking companies rose $6 million, or 1.9 percent.
- Notional derivatives decreased $19.0 trillion, or 7.9 percent. Derivative contracts remain concentrated in interest rate products, which comprise 78.9 percent of total derivative notional amounts. Credit derivatives, which, declined 9.2 percent from the third quarter and represent 4.3 percent of total derivatives notional amounts.

Enforcement Actions

The Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC) and the Financial Industry Regulatory Authority (FINRA) recently announced the following enforcement actions:

- The SEC charged an investment adviser and the advisor's New York-based firms with fraud for hiding the poor performance of loan assets in three collateralized loan obligation funds they manage. The SEC is seeking disgorgement and civil money penalties.
- The SEC charged a Texas-based company with violating whistleblower protection Rule 21F-17 enacted under the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. The SEC alleged the company used improperly restrictive language in confidentiality agreements that could possibly stifle the whistleblowing process. Without admitting or denying wrongdoing, the company settled the charges and agreed to pay a $130,000 penalty. It also amended its confidentiality statement by adding language making clear that employees are free to report possible violations to the SEC and other federal agencies without company approval or fear of retaliation.
- The SEC charged the owner and chief executive of a North Carolina-based business with defrauding a publicly-traded company and its shareholders both during and after the company's acquisition of the owner's business. Without admitting or denying the SEC's findings, the owner settled the charges and agreed to pay disgorgement of $376,007, prejudgment interest of $29,212 and a $140,000 civil money penalty. The owner also agreed to a 10-year bar from

serving as a public company officer or director. Separately, two former employers of the owner's firm were charged with participating in the fraud. Each of them separately settled the charges without admitting or denying the SEC's findings. One of them agreed to pay a $25,000 penalty; the other agreed to disgorge $25,000 plus prejudgment interest.

- The SEC charged two individuals with insider trading in advance of a proposed acquisition. The SEC is seeking disgorgement with interest and civil monetary penalties. In a parallel action, the U.S. Attorney's Office announced criminal charges against the individuals. The SEC investigation is continuing.
- The SEC charged the former CEO of a California-based firm with diverting nearly $200,000 in corporate funds for personal uses that were not disclosed to investors. The SEC is seeking a permanent injunction, an officer and director bar, civil money penalties and disgorgement. Separately, the SEC charged the individual's firm for having inadequate internal controls and failing to report the CEO's activities to investors. Without admitting or denying the SEC's findings, the firm agreed to pay $750,000 to settle the SEC's charges.
- The CFTC charged an individual with violating a CFTC Administrative Order that barred the individual from trading outright futures contracts in any market during the closing period for a two-year period. The individual settled the CFTC's charges and agreed to a permanent injunction and to pay a $100,000 civil monetary penalty. The Consent Order also extended the two-year ban from trading outright futures contracts in any market during the closing period to run for a two-year period from the date of the Consent Order.
- The CFTC charged two individuals with operating a fraudulent commodity pool that misappropriated $2 million from at least 31 investors. The CFTC is seeking restitution, disgorgement, a civil monetary penalty, permanent registration and trading bans and a permanent injunction.
- The CFTC charged two Illinois-based corporations for manipulation and attempted manipulation of cash prices and futures prices. The CFTC complaint alleges that the companies violated speculative position limits by holding futures positions in excess of speculative position limits established by the CFTC and the Chicago Board of Trade without a valid hedge exemption or a bona fide hedging need, and engaged in numerous noncompetitive trades. The complaint alleges that price shifts did occur and the companies earned over $5.4 million in profits. The CFTC seeks a permanent injunction, disgorgement and civil monetary penalties.
- FINRA individually sanctioned three firms with fines of $425,000, $175,000 and $100,000, respectively, for inadequate supervision of consolidated reports provided to customers and other violations. In concluding the settlements, the firms, based in Maryland, Illinois and Georgia, neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

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