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# The Washington Report

**for the week ended April 24, 2015**

## In This Issue

# Safety & Soundness

## Basel Committee Removes Selected National Discretions

On April 21, 2015, the Bank for International Settlements Basel Committee on Banking Supervision (Basel Committee) announced that it has agreed to remove certain national discretions from the Basel capital framework, including discretions related to the: treatment of past due loans; definition of retail exposures; transitional arrangements for corporate, sovereign, bank and retail exposures; rating structure standards for wholesale exposures; internal and external audit; and, re-ageing. Separately, the national discretion related to the internal ratings-based (IRB) approach treatment of equity exposures will expire in 2016. The national discretion allows countries to adapt the Basel standards to reflect differences in local financial systems, though the Basel Committee states the use of national discretions can also impair comparability across jurisdictions and increase variability in risk-weighted assets. The list of national discretions that are being removed from the Basel II capital framework can be found on the Basel Committee Web site.

In the same release, he Basel Committee also issued a response to a frequently asked question (FAQ) on funding valuation adjustment, which notes that a bank "should continue to derecognise its debit valuation adjustment in full, whether or not it has adopted a funding valuation-type adjustment."

## FDIC Issues ANPR to Consider New Recordkeeping Standards for Insured Institutions with a Large Number of Deposit Accounts

On April 21, 2015, the Federal Deposit Insurance Corporation (FDIC) issued an advanced notice of proposed rulemaking (ANPR) that seeks comment on whether certain insured depository institutions with "a large number of deposit accounts"--such as more than two million accounts–should be required to undertake actions to ensure that depositors would have timely access to their FDIC-insured funds in the event that one of these banks were to fail. The FDIC defines timely as "usually within one business day of failure."

The ANPR seeks feedback on the types of new data requirements that would benefit a rapid and efficient insurance determination process and also on the appropriate threshold for institutions to be subject to potential new requirements. In particular, the FDIC is seeking comment on whether these banks should be required to:

- Enhance their recordkeeping to maintain substantially more accurate and complete data on each depositor's ownership interest by right and capacity for all or for a large subset of the banks' deposit accounts.
- Develop and maintain the capability to calculate the insured and uninsured amounts for each depositor by depositor insurance capacity for all or a substantial subset of deposit accounts at the end of the business day.

The FDIC will accept comments through July 27, 2015.

## Senate Subcommittee Hearing Examines Regulatory Burdens from the Regulator Perspective

On April 23, 2015, the U.S. House of Representatives Committee on Financial Services Subcommittee on Financial Institutions and Consumer Credit held a hearing entitled, "Examining Regulatory Burdens – Regulator Perspective." The hearing was intended to examine the impact of regulatory burdens on the operations of community financial institutions and the behavior of consumers in the financial marketplace. Representatives from the Office of the Comptroller of the Currency (OCC), Conference of State Bank Supervisors (CSBS), Federal Deposit Insurance Corporation (FDIC), National

Credit Union Administration (NCUA), Federal Reserve Board (Federal Reserve), and the Consumer Financial Protection Bureau (CFPB or Bureau) provided testimony.

The regulators testified that they are committed to minimizing the regulatory burden for smaller institutions while maintaining safety and soundness and fair treatment for consumers. The CSBS representative said a definition of community banks is essential in order to create a regulatory framework that supports the community bank relationship lending model. "Providing legal authority to state regulators to process criminal background checks through NMLS (Nationwide Mortgage Licensing System & Registry) for all non-depository financial service providers is a necessary step toward creating a dynamic, effective regulatory system that works well for non-depository institutions and their consumers," he said.

The CFPB representative testified that the Bureau's risk-based supervision program for banks and nonbank financial firms enables more consistent treatment, ensures compliance with federal consumer financial laws, and "helps level the playing field among competing firms in mortgage origination, mortgage servicing, debt collection, student loan servicing, and other markets."

# Enterprise & Consumer Compliance

## CFPB Releases Expanded Toolkit for Organizations that Serve Low-Income Consumers

In a blog post on April 22, 2015, the Consumer Financial Protection Bureau (CFPB or Bureau) announced that it released an expanded version of the toolkit, "Your Money, Your Goals." First released in 2014, this toolkit is intended to be an interactive guide for organizations that serve low-income consumers, covering topics such as budgeting for daily expenses, managing debt, and avoiding common financial traps. Four versions of the toolkit are available, each designed for different sets of users:

- Social Services;
- Community Volunteers;
- Legal Aid; and
- Workers Organizations.

## FDIC Announces Phase II of the Youth Savings Pilot Program

On April 20, 2015, the Federal Deposit Insurance Corporation (FDIC) announced it is seeking institutions to participate in the second phase of its Youth Savings Pilot during the 2015-2016 school year. Interested parties must contact the FDIC by June 18, 2015. The program is designed to foster financial education through the opening of safe, low-cost savings accounts by school-age children. For participants in the program, the FDIC facilitates the sharing of best practices that help banks identify and address operational challenges. The FDIC intends to issue a report on both phases of the pilot in the fall of 2016.

## CFPB Announces that Certain Consumers Can Receive Credit Scores from Nonprofit Counseling Services

In a blog post on April 21, 2015, the Consumer Financial Protection Bureau (CFPB or Bureau) reported that FICO has reached agreements with the three largest credit reporting agencies to allow consumers who receive nonprofit credit counseling, housing counseling, and other services to obtain a copy of the FICO score that these organizations have

purchased on their behalf. Previously, counseling organizations, like other business users of credit reports and scores, generally have been prohibited by their contracts with the credit reporting agencies from giving the consumer the credit report or score that they have purchased on that consumer's behalf. The CFPB noted that one of the credit reporting agencies was intending to permit the nonprofit counselors that purchase credit reports on behalf of their clients to share the credit reports as well as the credit scores with those consumers.

### CFPB and FTC Charge Mortgage Servicer with UDAAP Violations

On April 21, 2015, the Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC) announced that they charged a Minnesota-based mortgage servicing company for unfair, deceptive, or abusive acts or practices and violations of the *Federal Trade Commission Act,* the *Fair Debt Collection Practices Act,* the *Fair Credit Reporting Act,* the *Consumer Financial Protection Act,* and the *Real Estate Settlement Procedures Act*. The regulators allege the company mistreated mortgage borrowers who were trying to save their homes from foreclosure by:

- Failing to honor modifications for loans transferred from other servicers;
- Demanding payments before providing loss mitigation options;
- Delaying decisions on short sales;
- Harassing and threatening overdue borrowers; and
- Using deceptive tactics to charge consumers convenience fees.

Without admitting or denying the findings, the mortgage servicer agreed to settle the charges and pay $48 million in restitution to victims and a $15 million civil money penalty as well as accept a permanent injunction, and establish and maintain a comprehensive data integrity program. The mortgage servicer also agreed to engage in efforts to help affected borrowers preserve their home, adhere to rigorous servicing transfer requirements, honor prior loss mitigation agreements, and provide access to quality customer service.

### CFPB Charges Military Allotment Processor with UDAAP Violations

On April 20, 2015, the Consumer Financial Protection Bureau (CFPB) charged a Kentucky-based company and its subsidiary, which served as third-party processors of military allotments, with engaging in unfair, deceptive, or abusive acts or practices (UDAAP). The Bureau alleges that the company did not disclose key information about fees associated with the accounts and did not notify the account holders when the fees were charged against the account balances. The company and its subsidiary agreed to settle the CFPB's charges and pay approximately $3.1 million in relief to harmed servicemembers.

## Insurance

### IAIS Seeks Comment on Preliminary Draft of Issues Paper on Conduct of Business Risk

On April 22, 2015, the International Association of Insurance Commissioners (IAIS) released a preliminary draft paper entitled "Issues Paper on Conduct of Business Risk and its Management." The IAIS is seeking "informal" comments from stakeholders interested in the work of the IAIS Market Conduct Working Group (MCWG) in advance of an upcoming meeting. The MCWG intends to propose in June that the draft paper be circulated for pubic consultation and stakeholders and interested parties are encouraged to submit "formal" comments at that time.

The preliminary draft paper concludes that prudential and conduct of business risks are closely linked but also differ in important ways and need to be managed, mitigated and supervised holistically. The deadline for comments on the preliminary draft is May 1, 2015. More information and the preliminary draft paper are available on the IAIS Web site.

# Capital Markets and Investment Management

## CFTC Issues Guidance to Swap Execution Facilities on the Calculation of Projected Operating Costs

On April 23, 2015, the U.S. Commodity Futures Trading Commission's (CFTC) Division of Market Oversight (DMO) issued CFTC Letter No. 15-26 to provide guidance to Swap Execution Facilities (SEF) regarding the calculation of projected operating costs for purposes of complying with the financial resource requirements under SEF Core Principle 13 and Commission Regulation 37.1303. This guidance follows two no-action letters providing relief in connection with erroneous swap trades and swap trade confirmations the DMO issued on April 22, 2015.

The Guidance notes that one cost incurred by voice-based SEFs – the variable commissions such SEFs might pay their employee-brokers, calculated as a percentage of transaction revenue generated by the voice-based SEF – is, unlike fixed salaries or compensation, an expense not payable unless and until revenue is collected by the SEF. The Guidance provides that these variable commissions do not have to be included in a SEF's calculation of projected operating costs. In contrast to variable commissions, any fixed salaries or compensation payable to employee-brokers of the SEF must be included in the calculation of projected operating expenses.

## OFR Releases Research Brief: "Repo and Securities Lending: Improving Transparency with Better Data."

On April 23, 2015, the Office of Financial Research (OFR) released a research brief entitled, "Repo and Securities Lending: Improving Transparency with Better Data." The author focuses on data gaps in U.S. repurchase agreements and securities lending markets, and states that a paucity of data and a limited understanding of the institutional structure of these markets prevented regulators from fully identifying and responding to vulnerabilities during the 2007-09 financial crisis. The author also discusses the OFR and Federal Reserve Board pilot data collection effort to close these data gaps.

## SEC Announces Whistleblower Award for Compliance Officer

On April 22, 2015, the Securities and Exchange Commission (SEC) announced an award of approximately $1.5 million to a compliance officer who provided information that assisted the SEC in an enforcement action against the whistleblower's company. The SEC stated that the compliance officer had a reasonable basis to believe that disclosure to the SEC was necessary to prevent imminent misconduct from causing substantial financial harm to the compliance officer's company or its investors.

## 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 a Delaware-based investment advisory firm and its chief compliance officer (CCO) with breaching their fiduciary duty by failing to disclose a conflict of interest created by the outside business activity of a top-performing portfolio manager. It also charged them with failing to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the *Investment Advisers Act*. Without admitting or denying the SEC's findings, the firm agreed to settle the charges and pay a $12 million penalty and to engage an independent compliance consultant to conduct an internal review. The CCO separately agreed to pay $60,000 for the charges against him.
- The SEC charged a Texas-based real estate investment firm with failing to make eight required public filings. The SEC alleges the firm improperly treated certain distinct corporations and custodial accounts as single holders of record, violating issuer reporting requirements under federal securities laws and misapplying the rules concerning the counting of holders of record of preferred shares. Without admitting or denying the findings, the firm agreed to pay $640,000 to settle the SEC's charges.
- The CFTC charged a Florida investment manager and several entities he operated with fraud in connection with their solicitation of customers for their foreign currency (forex) and options trading pools, misappropriation of customer funds, and their issuance of false statements and registration violations. The CFTC seeks restitution, disgorgement, civil monetary penalties, trading and registration bans, and a permanent injunction.
- The CFTC charged a foreign-based futures trader and the trader's foreign-based company with manipulating, attempting to manipulate, and spoofing the Chicago Mercantile Exchange's E-mini S&P 500 near month futures contract (E-mini S&P). The CFTC alleges the trader profited more than $40 million. Foreign authorities arrested the trader at the request of the U.S. Department of Justice. The CFTC is seeking a permanent injunction, disgorgement, civil monetary penalties, trading suspensions or bans, and payment of costs and fees.
- The CFTC charged the owner of a Florida-based telemarketing firm that solicited retail customers to invest in off-exchange retail commodity transactions with engaging in illegal, off-exchange transactions in precious metals with retail customers on a leveraged, margined, or financed basis. The CFTC seeks disgorgement, civil monetary penalties, permanent registration and trading bans, and a permanent injunction.
- The CFTC charged a foreign-based financial institution for false reporting and attempted manipulation and, at times, successful manipulation of the London Interbank Offered Rate (LIBOR) for U.S. Dollar, Yen, Sterling, and Swiss Franc, and the Euro Interbank Offered Rate (Euribor). The institution is also charged with aiding and abetting the attempts of traders at other banks to manipulate Yen LIBOR and Euribor. The bank settled the CFTC's charges and agreed to pay a civil monetary penalty of $800 million and adhere to specific undertakings to ensure the integrity of its LIBOR and Euribor and other benchmark interest rate submissions.
- FINRA charged a New York-based broker-dealer firm with supervisory failures that resulted in sales of unsuitable reverse convertibles. The firm settled the charges without admitting or denying FINRA's findings and agreed to pay a $1 million fine and approximately $434,000 in restitution to customers.

## Contact Us

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


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