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Safety & Soundness

Federal Reserve Seeks Comment on Proposed Policy Statement and Framework for the Countercyclical Capital Buffer

The Federal Reserve Board (Federal Reserve) released a proposed policy statement on December 21, 2015, that outlines the framework the Federal Reserve would follow to set the Countercyclical Capital Buffer (CCyB). The CCyB is a macroprudential tool that can be used to increase the resilience of the financial system by raising capital requirements when there is an increased risk of above-normal losses in the future. It applies to banking organizations that have more than \$250 billion in assets or \$10 billion in on-balance-sheet foreign exposures, as well as to depository institution subsidiaries of such banking organizations. It can range from 0 percent to 2.5 percent of risk-weighted assets based on “financial system vulnerabilities.” The policy statement provides a background on the range of vulnerabilities facing the financial system and other factors that the Federal Reserve could take into account while setting the buffer, such as: leverage in the nonfinancial sector; leverage in the financial sector; transformation of maturity and liquidity in the financial sector; and valuation of assets. The Federal Reserve states that it would also monitor financial and economic indicators and use different models to evaluate risks to financial stability. Comments on the proposed policy statement will be accepted through February 19, 2016. [\[Press Statement\]](#)

In addition to releasing the framework for comment, the Federal Reserve affirmed the CCyB amount at the current level of 0 percent. If the Federal Reserve were to decide to modify the CCyB amount in the future, the increase would become effective 12 months after publication, unless the Federal Reserve established an earlier effective date.

BIS Paper Outlines Four Lines of Defense Model

In December 2015, the Bank for International Settlements (BIS) released Financial Stability Institute paper No. 11, “The Four Lines of Defense Model for Financial Institutions,” which builds on the traditional “three lines of defense model” to give supervisors and external auditors a specific role to play in the internal control system of banks and insurance companies. The authors suggest that, for financial institutions, the responsibilities and relationships between internal auditors, supervisors and external auditors outlined in the “four lines of defense model” would enhance control systems. [\[BIS Paper\]](#)

Federal Reserve Releases Capital Planning Guidance to Large Financial Institutions

On December 21, 2015, the Federal Reserve Board (Federal Reserve) announced the release of guidance to its examiners and banking institutions that details the agency’s capital planning expectations for all large financial institutions and clarifies differences in those expectations based on the size of the firm and complexity of its operations.

- Supervision and Regulation Letter 15-18 (SR 15-18), dated December 18, 2015, applies to bank holding companies (BHCs) and intermediate holding companies of foreign banks (IHCs) that are subject to the Federal Reserve's Large Institution Supervision Coordinating Committee (LISCC) framework, or have \$250 billion or more in total consolidated assets or \$10 billion or more in foreign exposures.
- SR 15-19, dated December 18, 2015, applies to BHCs and IHCs with total consolidated assets between \$50 billion and \$250 billion, and also have less than \$10 billion in foreign exposures and are not otherwise subject to the LISCC framework.

In each instance, the guidance is effective for the 2016 CCAR cycle and outlines capital planning expectations in the following areas: governance, risk management, internal controls, capital policy, scenario design, and projection

methodologies. The Federal Reserve states the guidance largely consolidates existing capital planning guidance. [\[Press Statement\]](#) [\[SR 15-18\]](#) [\[SR 15-19\]](#)

Basel Committee Seeks Comment on Application of Core Principles to Financial Inclusion

On December 21, 2015, the Basel Committee on Banking Supervision (Basel Committee) issued for public consultation, proposed guidance on the regulation and supervision of institutions relevant to financial inclusion. In particular, the document provides additional guidance with respect to the application of the Basel Committee's *Core Principles for Effective Banking Supervision* to the supervision of institutions engaged in serving the financially unserved and underserved. It does not create new principles and does not exclude applicability of any Core Principle to any market development relevant to financial inclusion. Comments will be accepted until March 31, 2016. [\[Press Statement\]](#); [\[Consultative Document\]](#)

Enterprise & Consumer Compliance

Banking Agencies Publish New CRA Asset-Size Thresholds

On December 22, 2015, the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Office of the Comptroller of the Currency issued a joint statement announcing annual adjustments to the asset-size thresholds they will use to define small banks, small savings associations, intermediate small banks, and intermediate small savings associations as required under the *Community Reinvestment Act* (CRA). Effective January 1, 2016, the revised asset thresholds are as follows:

- “Small bank” or “small savings association” includes institutions that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.216 billion.
- “Intermediate small bank” or “intermediate small savings association” includes small institutions with assets of at least \$304 million as of December 31 of both of the prior two calendar years, and less than \$1.216 billion as of December 31 of either of the prior two calendar years. [\[Joint Press Statement\]](#)

CFPB Issues Monthly Complaint Report

The Consumer Financial Protection Bureau (CFPB or Bureau) released its Monthly Complaint Report on December 22, 2015, outlining the consumer complaints received by the Bureau during the month of November. This report focused primarily on consumer complaints with respect to money transfers, which largely pertained to difficulties related to the safe and efficient transfer of money, inadequate customer service, and vulnerability to fraud. Additionally, the national complaint overview for the month revealed that the two most complained about financial products were debt collection and mortgages, representing nearly 49 percent of the complaints submitted. However, a 12 percent decline was noted in overall complaint volume between October 2015 and November 2015. [\[Press Statement\]](#) [\[Complaint Report\]](#)

FTC Issues Enforcement Policy Statement on Deceptively Formatted Advertising Including “Native Advertising” Online

The Federal Trade Commission (FTC) has issued an enforcement policy statement on deceptively formatted advertisements, which explains how the FTC applies established consumer protection principles to different advertising formats. The FTC also released guidance on applying the policy statement to “native advertising,” which refers to online

content that bears a similarity to the news, feature articles, product reviews, entertainment, and other material that surround it. The FTC states, “regardless of the medium in which an advertising or promotional message is disseminated, deception occurs when consumers acting reasonably under the circumstances are misled about its nature or source, and such misleading impression is likely to affect their decisions or conduct regarding the advertised product or the advertising.” [\[Press Statement\]](#) [\[Policy Statement\]](#)

Enforcement Actions

The following enforcement actions were announced between December 21, 2015 and January 8, 2016.

- The Consumer Financial Protection Bureau (CFPB or Bureau) filed a proposed consent order in a federal court that would resolve its lawsuit against a law firm and its three principal partners related to illegal debt collection practices in violation of the *Fair Debt Collection Practices Act* and the unfair, deceptive, or abusive acts or practices provisions of the *Consumer Financial Protection Act*. The defendants allegedly relied on deceptive court filings and faulty evidence to issue multiple lawsuits. If approved, the order would bar the firm and its principal partners from: engaging in illegal debt-collection practices; filing lawsuits without reviewing specific documentation related to the consumers’ debt; and intimidating consumers with deceptive court filings. The order also requires the firm and its principals to pay a \$3.1 million as civil money penalty.
- The Federal Trade Commission (FTC) settled charges against two payday lending companies the FTC found to have illegally charged undisclosed and inflated fees to consumers. In particular, the FTC found the companies: misrepresented the cost of loans to consumers, in violation of the FTC Act; failed to accurately disclose loan rates and other loan terms, in violation of the *Truth in Lending Act*; and, made preauthorized debits from consumers’ bank accounts a condition of the loans, in violation of the *Electronic Funds Transfer Act*. The companies each agreed to pay a penalty of \$2.2 million and to waive, collectively, approximately \$68 million in fees that were not collected. The settlement is part of a larger case involving additional related entities and individuals.
- The FTC and the State of Florida charged a payment processing business with credit card laundering and illegally assisting a nationwide debt relief telemarketing scheme that allegedly defrauded consumers of millions of dollars. The company allegedly arranged for at least 26 shell merchant accounts to be used to process credit card payments for a debt relief operation in violation of the *Telemarketing Sales Rule*.
- The Federal Reserve Board (Federal Reserve) assessed a civil monetary penalty and entered into a consent cease and desist order with a company that partnered with colleges and universities to provide financial aid-related services to students. The order addresses the Federal Reserve’s findings the company engaged in deceptive practices that misled students relying on information in its marketing materials and on its Website, in violation of the unfair and deceptive acts or practices provisions in Section 5 of the FTC Act. The consent order requires the company to: pay a civil money penalty of \$2,231,250; provide restitution of approximately \$24 million in fees to approximately 570,000 students; adopt a consumer compliance risk-management program; and refrain from any future violations of Section 5 of the FTC Act. On the same day, the Federal Deposit Insurance Corporation (FDIC) announced a settlement with this same company and also an affiliated bank that provided payment processing and information management services. The action addressed the FDIC’s findings the company and the bank engaged in deceptive practices in violation of Section 5 of the FTC Act. The FDIC ordered the firms to pay a civil money penalty of \$2.23 million and \$1.75 million respectively, and together to pay a total restitution of approximately \$31 million to an estimated 900,000 consumers. In addition, the firms were ordered to take affirmative steps to correct the violations, and to ensure compliance with all consumer protection laws, including the FTC Act.
- The FDIC announced a settlement with a state member bank to address unfair and deceptive acts or practices in violation of Section 5 of the FTC Act with regard to its prepaid card activities. In particular, the bank was found to have failed to provide promised consumer protections and reward benefits as well as to charge deceptive fees for certain accounts. A Consent Order, Order for Restitution, and Order to Pay Civil Money Penalty were issued to the bank, requiring the bank to pay a civil money penalty of \$3 million and an estimated \$1.3 million in restitution to approximately 21,000 customers.

Insurance

IAIS Announces Launch of Self-Assessment and Peer Review

On January 6, 2016, the International Association of Insurance Supervisors (IAIS) announced the launch of a theme based self-assessment and peer review survey for insurers that addresses “Reinsurance and other forms of risk transfer” and “Macro-prudential surveillance and insurance supervision (Insurance Core Principles 13 and 24, respectively). Survey participants are asked to respond by February 3, 2016. [\[Press Statement\]](#)

Capital Markets and Investment Management

IOSCO Publishes Crowdfunding Survey Report

The International Organization of Securities Commissions (IOSCO) published a report on December 21, 2015, summarizing responses to its 2015 Crowdfunding Survey. For the most part, the jurisdictions surveyed indicated they were in the early stages of regulatory development to address crowdfunding and a variety of approaches were reported, including an application of the jurisdiction’s general securities regulatory framework and the introduction of specific regulatory crowdfunding regimes. The report also provides an overview of the factors that might be useful to the development of regulatory measures unique to crowdfunding, with an eye toward investor protection and market integrity. [\[Press Statement\]](#) [\[Crowdfunding Survey Response Report\]](#)

IOSCO Issues Final Report on Sound Practices Related to Use of External Credit Ratings; SEC Issues Staff Report on Credit Ratings Agencies

On December 22, 2015, the International Organization of Securities Commissions (IOSCO) published a report entitled *Sound Practices at Large Intermediaries relating to the Assessment of Creditworthiness and the Use of External Credit Ratings*. The report recommends 12 sound practices for regulators to consider in their oversight of market intermediaries. IOSCO suggests that large market intermediaries might also use the sound practices to develop and implement alternative methods for the assessment of creditworthiness that reduce their reliance on credit rating agencies for credit risk assessment. [\[Press Statement\]](#) [\[Sound Practices Report\]](#)

In an unrelated action, the Securities and Exchange Commission published two annual staff reports on Credit Rating Agencies (CRAs) that are registered as Nationally Recognized Statistical Rating Organizations (NRSROs). The SEC states the reports show that the NRSROs have made operational improvements and enhanced process accountability, controls, and governance. The annual examination of CRAs by SEC staff is required under the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. [\[Press Statement\]](#) [\[Annual Report to Congress\]](#)

IOSCO Publishes Reports on Business Continuity and Recovery Planning for Trading Venues and Financial Intermediaries

The International Organization of Securities Commissions (IOSCO) published two reports on December 22, 2015, that seek to enhance the ability of financial markets and intermediaries to manage risks, and quickly resume operations in the event of a disruption.

- *Mechanisms for Trading Venues to Effectively Manage Electronic Trading Risks and Plans for Business Continuity* provides an overview of the steps trading venues take to manage the risks associated with electronic trading and how they manage disruptions through Business Continuity Plans. The report discusses IOSCO findings based on survey responses from trading venues and trading venue participants in more than 30 jurisdictions, as well as proposes recommendations and sound practices. [\[Report 1\]](#)
- *Market Intermediary Business Continuity and Recovery Planning* sets forth two standards for regulators, describing how to implement the “IOSCO Objectives and Principles of Securities Regulation.” It also provides sound practices that regulators could consider as part of their oversight of market intermediaries, and in the development and implementation of business continuity plans. [\[Report 2\]](#)

The key objective of these reports is to help identify and address possible weaknesses or gaps in the business continuity plans and recovery strategies of trading venues and market intermediaries. [\[Press Statement\]](#)

CFTC Issues No-Action Relief Letters

On January 8, 2016, the Commodity Futures Trading Commission’s (CFTC’s) Division of Clearing and Risk issued no-action relief from the swap clearing requirement for:

- Small bank holding companies (SBHCs) and savings and loan holding companies having consolidated assets of \$10 billion or less; and
- Community Development Financial Institutions that have received a certification from the U.S. Department of the Treasury (CDFIs).

These entities may elect not to clear a swap as per CFTC’s requirements, provided they elect the end-user exception (CFTC regulation 50.50) and comply with certain other conditions described in the letters granting relief.

[\[Press Statement\]](#) [\[CFTC Letter 16-01\]](#) [\[CFTC Letter 16-02\]](#)

On December 22, 2015, the CFTC’s Division of Market Oversight (DMO) announced a time-limited no-action relief for Swap Execution Facilities (SEFs). This exempts SEFs from capturing post-trade allocation information in their audit trail data through November 15, 2017, subject to the following conditions:

- The SEF must have a rule requiring market participants to provide post-trade allocation information to the SEF for particular trades, if the SEF requests such information; and
- In the course of a trade practice surveillance or market surveillance investigation into any trading activity involving post trade allocations, the SEF must ascertain whether a post-trade allocation was made, and if so, the SEF must request, obtain, and review the post-trade allocation information as part of its investigation.

During this period of relief, the DMO will continue to work with SEFs and other parties involved in the allocation workflow to identify methods for obtaining post-trade allocation information. [\[Press Statement\]](#) [\[CFTC Letter 15-68\]](#)

CFTC Seeks Comment on Technical Specifications for Certain Swap Data Elements

The Commodity Futures Trading Commission’s (CFTC) Division of Market Oversight and Office of Data and Technology issued a request for comment on draft technical specifications for certain prioritized swap data elements and associated questions. In particular, the request seeks input on 80 questions addressing 120 data elements for several swap data reporting topics, including counterparty-related elements, price, clearing, product, periodic reporting, orders, package transactions, options, additional fixed payments, notional amount, events, rates and foreign exchange. The CFTC expects these inputs would help assess ongoing efforts to improve swap transaction data quality and determine whether any clarifications, modifications, or enhancements may be necessary for swap data repositories to appropriately transmit swap

data elements to the CFTC. The draft will be open for comments until February 22, 2016. [\[Press Statement\]](#) [\[Draft Technical Specifications for Certain Swap Data Elements\]](#)

SEC Releases ANPR and Concept Release on Transfer Agent Rules

The Securities and Exchange Commission (SEC) issued an Advanced Notice of Proposed Rulemaking (ANPR) and a Concept Release on December 22, 2015, to solicit public comment on the agency's transfer agent rules. The ANPR has identified certain areas in which it intends to propose specific rules or to amend rules, including registration and annual reporting requirements, safeguarding of funds and securities, antifraud requirements in connection with the issuance and transfer of restricted securities, and cybersecurity and information technology, among others. The concept release seeks comments on a broader range of issues to help the SEC in its consideration of additional rulemaking, including the processing of book entry securities, bank and broker-dealer recordkeeping for beneficial owners, administration of issuer plans, the role of transfer agents to mutual funds, and crowdfunding. [\[Press Statement\]](#) [\[ANPR and Concept Release\]](#)

FINRA Releases 2016 Regulatory and Examination Priorities

On January 5, 2016, the Financial Industry Regulatory Authority (FINRA) released its 2016 Regulatory and Examination Priorities letter, which highlights the intended areas of supervisory focus during the upcoming year, including:

- *Culture, conflicts of interest and ethics:* FINRA will formalize its assessment of firm culture to better understand how culture affects compliance and risk management practices.
- *Supervision, risk management and controls:* FINRA will focus on areas where it has observed repeated concerns that affect business' conduct and the integrity of the markets, including management of conflicts of interest, technology, outsourcing, and anti-money laundering.
- *Liquidity:* FINRA will focus on adequacy of firms' contingency funding plans both in light of their business model and in connection with testing for market wide and idiosyncratic stresses. FINRA will also focus on evaluating the adequacy of high-frequency-trading firms' liquidity planning and controls.
- *Other priority areas:* Areas such as, suitability and concentrations, seniors and vulnerable investors, sales charge discounts and waivers, and market integrity (including the Vendor Display Rule, market access, fixed-income order handling, Regulation SHO, and manipulation across markets and products) will also be part of FINRA's priorities.

[\[Press Statement\]](#) [\[2016 Priorities letter\]](#)

Financial Crimes

FinCEN Takes Action Against Precious Metals Dealer

The Financial Crimes Enforcement Network (FinCEN) has imposed a civil money penalty against a precious metals dealer, its owner, and its compliance officer, for violations of the *Bank Secrecy Act* (BSA). The dealer was found to be lacking in an anti-money laundering (AML) program reasonably designed to ensure compliance with the BSA, which resulted in failure to appropriately assess its money laundering and terrorist financing risks, inadequate due diligence conducted on highest risk customers, and failure to implement effective procedures to identify or inquire into red flags. A civil monetary penalty of \$200,000 will be imposed on the named parties and the firm has also agreed to undertake improvements to its BSA/AML Program, comply with all applicable BSA requirements, including implementing risk-based "Know Your Customer" (KYC) measures, and detecting and preventing money laundering, and the financing of terrorist activities.

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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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