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Safety & Soundness

Federal Reserve and FDIC Release Public Sections of Resolution Plans

On January 15, 2015, the Federal Reserve Board (Federal Reserve) and the Federal Deposit Insurance Corporation (FDIC) released the public portions of resolution plans for certain banking organizations and certain nonbank financial companies with generally less than $100 billion in qualifying nonbank assets. This is the second set of resolution plans submitted for most of this group. The public portions of the resolution plans, as well as previously filed resolution plans, are available on the Federal Reserve and FDIC Web sites.

In addition, the FDIC released the public sections of the recently filed resolution plans of 22 insured depository institutions. The majority of these insured depository institutions are subsidiaries of bank holding companies that concurrently submitted resolution plans. The insured depository institution plans are required by a separate regulation issued by the FDIC, which requires a covered insured depository institution with assets greater than $50 billion to submit a plan under which the FDIC, as receiver, might resolve the institution under the *Federal Deposit Insurance Act.*

FDIC Launches Web Page to Support Marketing of Failing Financial Institutions

The Federal Deposit Insurance Corporation (FDIC) released Financial Institution Letter FIL-4-2015 on January 15, 2015, to announce the addition of a page on its Web site containing information about failing bank acquisitions. This Web page is intended to educate bankers about key components associated with the process of acquiring a failing financial institution, including regulatory qualification guidance, performing due diligence, and general transaction terms.

OCC Paper Discusses the Competitive Advantages of Collaboration for Community National Banks and Federal Savings Associations

On January 13, 2015, the Office of the Comptroller of the Currency (OCC) published a paper, entitled "An Opportunity for Community Banks: Working Together Collaboratively." In the paper, the OCC states that it supports collaboration among community national banks and federal savings associations (collectively, banks) in order to achieve economies of scale and other potential benefits. It also advises banks to take appropriate steps to ensure that the activities do not violate antitrust laws and to ensure that their collaboration with third parties is subject to effective strategic planning, risk management, and oversight.

In particular, the paper:

- Describes how community banks can pool resources to obtain cost efficiencies and leverage specialized expertise;
- Explores the benefits of collaboration;
- Outlines how community banks can structure collaborative arrangements within their respective statutory frameworks; and
- Emphasizes the need for effective oversight of collaborative arrangements.

OCC Revises Guidance in Three Booklets of *Comptroller's Handbook*: "Retail Nondeposit Investment Products," Conflicts of Interest," and "Litigation and Other Legal Matters"

On January 14, 2015, the Office of the Comptroller of the Currency (OCC) issued OCC Bulletin 2015-2, OCC Bulletin 2015-03, and OCC Bulletin 2015-4 to announce revisions to three booklets in the *Comptroller's Handbook*.

The revised "Retail Nondeposit Investment Products" booklet (Bulletin 2015-2) provides updated guidance to examiners of national banks' and federal savings associations' (collectively, banks) on activities involving the recommendation or sale of nondeposit investment products to retail customers. The booklet includes an overview of bank delivery channels and the regulatory structure and requirements associated with banks offering these products.

The revised "Conflicts of Interest" booklet (Bulletin 2015-3) provides updated guidance for examiners regarding risks and expected controls over conflicts of interest that may arise in asset management activities.

The revised "Litigation and Other Legal Matters" booklet (Bulletin 2015-4) provides updated guidance to examiners assessing a bank's litigation exposures, associated risks, and risk management practices.

Enterprise & Consumer Compliance

CFPB Seeks Feedback on "Safe Student Account Scorecard"

The Consumer Financial Protection Bureau (Bureau or CFPB) released a request for information on January 14, 2015, seeking feedback on a draft "Safe Student Account Scorecard." The scorecard is intended to be used by colleges and universities when soliciting relationship agreements with financial institutions to offer financial products to their students. As proposed, financial institutions would be asked to provide the college or university with: a description of product fees and features; disclosure of their marketing practices; a description of income generated by the products for the financial institution and for the college or university; and, a summary accounting of the annual fees charged to account holders at the college or university. The Bureau is seeking comment on the scorecard from the public, including students and their parents, institutions of higher education, and financial institutions. Comments are requested by March 16, 2015.

The Bureau's request for information includes a sample version of the Safe Student Account Scorecard, which the CFPB states is based on the FDIC's Model Safe Accounts template. A draft containing sample responses is also provided.

CFPB Releases Report on Consumers' Mortgage Shopping Experiences and Online Tool to Help Borrowers Shop for Mortgages

On January 13, 2015, the Consumer Financial Protection Bureau (CFPB or Bureau) released a report entitled "Consumers mortgage shopping experience," which, among other things, highlights survey findings indicating that almost half of consumers do not shop for mortgages or compare mortgage costs when purchasing a home, and that three out of four consumers only apply for a mortgage with one lender or broker. The report is based on results from data obtained through the National Survey of Mortgage Borrowers, a voluntary survey jointly conducted by the CFPB and the Federal Housing Finance Agency. The survey was initiated in early 2014 using data from consumers who took out a mortgage to buy a home in 2013, and it has and will be conducted on a quarterly basis going forward.

Coincident with the report, the Bureau released an interactive, online toolkit called "Owning a Home," to help borrowers shop for a mortgage. Included in the toolkit is a rate checker intended to help borrowers understand what interest rates may be available to them by using the same underwriting variables that lenders use on their internal rate sheets. The toolkit is part of the Bureau's "Know Before You Owe" mortgage initiative.

Federal Reserve to Form Community Advisory Council; CFPB Seeks Nominations to Three Consumer Advisory Councils

On January 16, 2015, the Federal Reserve Board (Federal Reserve) announced its intention to form a Community Advisory Council (CAC) comprised of fifteen individuals with consumer and community development-related expertise. The CAC will meet semiannually with the Federal Reserve to provide information, advice, and recommendations on a wide range of relevant policy matters and emerging issues of interest. The concerns of low- and moderate-income populations is expected to be of particular concern to the CAC. Members will serve staggered three-year terms and will be selected by the Federal Reserve through a public nomination process. The Federal Reserve expects to provide information regarding the nomination process soon and intends to hold the first meeting of the CAC in the fourth quarter of 2015.

Also on January 16, 2015, the Consumer Financial Protection Bureau (CFPB) announced in a blog post that it is seeking applications for membership to its Consumer Advisory Board, Community Bank Advisory Council, and Credit Union Advisory Council. The CFPB states they are specifically looking for

- "Experts in consumer protection, community development, consumer finance, fair lending, and civil rights
- Experts in consumer financial products or services
- Representatives of banks that primarily serve underserved communities
- Representatives of communities that have been significantly impacted by higher priced mortgage loans
- Current employees of credit unions and community banks
- Academics (Experts in research methodologies, framing research questions, data collection, and analytic strategies)."

FTC Settles Charges with Payday Lenders

The Federal Trade Commission (FTC) announced on January 16, 2015, that it had reached a settlement with two payday lenders to address the FTC's allegations they charged consumers undisclosed and inflated fees in violation of the *Federal Trade Commission Act*. The FTC also charged the companies with violations of the *Truth-in-Lending Act* and the *Electronic Funds Transfer Act* for failing to accurately disclose the annual percentage rate and other loan terms and making preauthorized debits from consumers' bank accounts a condition of the loans. The companies agreed to pay $21 million and to waive an additional $285 million in charges that had been assessed but not collected.

Capital Markets & Investment Management

SEC Adopts Rules to Increase Transparency in Security-Based Swap Market; Proposes Additional Security-Based Swap Transaction Reporting Rules and Guidance

On January 14, 2015, the Securities and Exchange Commission (SEC) announced that it had adopted two new "sets" of rules that will require security-based swap data repositories (SDRs) to register with the SEC and prescribe reporting and public dissemination requirements for security-based swap transaction data. The new rules are intended to increase transparency in the security-based swap market and to ensure that SDRs maintain complete records of security-based swap transactions that can be accessed by regulators.

The SEC summarizes that the rules addressing security-based swap data reporting and public dissemination, referred to as Regulation SBSR, outline the information that must be reported and publicly disseminated for each security-based swap transaction. In addition, the rules assign reporting duties for many security-based swap transactions and require SDRs registered with the SEC to establish and maintain policies and procedures for carrying out their duties under Regulation SBSR. The Global Legal Entity Identifier System is recognized in the rules as the system from which security-based swap counterparties must obtain codes to identify themselves when reporting security-based swap data. The

application of Regulation SBSR to cross-border security-based swap activity is also addressed in the rule, which also includes provisions to permit market participants to satisfy their obligations under Regulation SBSR through compliance with the comparable regulation of a foreign jurisdiction.

The SEC also proposed certain additional rules, rule amendments, and guidance related to the reporting and public dissemination of security-based swap transaction data. In particular, the SEC states the proposed rule amendments would assign reporting duties for certain security-based swaps not addressed by the adopted rules, prohibit registered SDRs from charging fees to or imposing usage restrictions on the users of publicly disseminated security-based swap transaction data, and provide a compliance schedule for certain provisions of Regulation SBSR.

The new rules will become effective 60 days after they are published in the *Federal Register*. Persons subject to the new rules governing the registration of SDRs must comply within 365 days following the publication date. The compliance date for certain provisions of Regulation SBSR is the effective date and the SEC is proposing compliance dates for the remaining provisions of Regulation SBSR in the proposed amendments release.

SEC Announces 2015 Examination Priorities

On January 13, 2015, the Securities and Exchange Commission (SEC) announced the priorities for its Office of Compliance Inspections and Examinations' (OCIE) during 2015. The SEC stated the priorities reflect certain practices and products that OCIE perceives to present potentially heightened risk to investors and/or the integrity of capital markets. These priorities focus on:

- Protecting retail investors, especially those saving for or in retirement;
- Assessing market-wide risks; and
- Using data analytics to identify signs of potential illegal activity.

The 2015 examination priorities address issues across a variety of financial institutions, including investment advisers, investment companies, broker-dealers, transfer agents, clearing agencies, and national securities exchanges. The SEC stated that the published priorities are not exhaustive and may be adjusted in light of market conditions, industry developments, and ongoing risk assessment activities.

U.S. and E.U. Financial Markets Group Exchange Information on Regulatory Developments

Participants in the U.S.-E.U. Financial Markets Regulatory Dialogue (FMRD) met on January 12, 2015, to exchange information on regulatory developments. They discussed their cooperation and shared interests in continuing to implement and enforce robust standards, including those on the G-20 financial regulatory agenda. The agenda was extensive and included: implementation of Basel III capital, leverage, and liquidity rules; implementation of over-the-counter (OTC) derivatives reforms (including a discussion of cross-border issues); and recent policy developments on cross-border resolution.

Participants exchanged views on bank structural measures, securitization, money market funds, alternative investment fund managers, benchmarks, information sharing for supervisory and enforcement purposes, the implementation of UCITS reforms, and audit cooperation and macro-prudential oversight. A summary of the discussions can be found on the Web site of the U.S. Department of the Treasury.

E.U. participants included representatives of the European Commission and the European Securities and Markets Authority. U.S. participants included staff of the Treasury and independent regulatory agencies, including the Federal Reserve Board, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission, as well as the Public Company Accounting Oversight Board. Each U.S. participant discussed and expressed positions on issues in their respective areas of responsibility.

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 two national security exchanges with having rules that failed to accurately describe the order types being used on the exchanges. Without admitting or denying the charges, the exchanges agreed to pay a $14 million penalty to settle SEC charges. The penalty is the SEC's largest against a national securities exchange, and the case is the SEC's first principally focusing on stock exchange order types.
- The SEC charged an individual living in a foreign country with orchestrating a market manipulation scheme that relied on "layering." The SEC also holds the individual liable for the conduct of the traders under the individual's management. In a parallel action, the U.S. Attorney's Office announced criminal charges against the individual. The SEC is seeking a return of his alleged ill-gotten gains with interest plus penalties.
- The SEC charged a subsidiary of a foreign financial services company with disclosure failures and other securities law violations related to the operation and marketing of its alternative trading system, or "dark pool." Without admitting or denying the charges, the subsidiary agreed to settle the charges by paying more than $14.4 million, including a $12 million penalty that is the SEC's largest against an alternative trading system.
- The SEC charged a foreign-based attorney and stock promoter with creating sham public shell companies. The SEC alleges the attorney recruited a second attorney and two audit firms to help carry out the microcap scheme. The SEC is seeking a permanent injunction, disgorgement, civil money penalties, and a penny stock bar. Separately, three of the figurehead CEOs installed by the attorney agreed to settle the SEC's charges. Without admitting or denying the SEC's findings, they each agreed to be barred from serving as an officer or director of a public company or from participating in penny stock offerings. They also agreed to disgorge money paid to them by the attorney and pay additional penalties.
- The CFTC charged a Kentucky-based corporation with acting as an unregistered Commodity Trading Advisor (CTA) to more than fifteen clients. The CFTC alleges the corporation advised the clients regarding the value of or the advisability of trading in futures contracts and over-the-counter swaps and publicly presented itself as a CTA, without being registered as such with the CFTC. The corporation settled the CFTC's charges without admitting or denying the charges and agreed to pay a $140,000 civil monetary penalty.
- The CFTC charged a Florida-based limited liability company and its principals with operating a fraudulent foreign currency commodity pool and not registering with the CFTC. A U.S. District Judge issued an emergency Order freezing and preserving assets under their control and prohibiting them from destroying documents or denying CFTC staff access to their books and records. The CFTC seeks restitution, disgorgement, a civil monetary penalty, permanent registration and trading bans, and a permanent injunction.
- The CFTC announced that a U.S. District Court judge entered an Order of default judgment and permanent injunction against two New Jersey-based commodity pool operators (CPOs) and their sole principal for misappropriating approximately $190,000. The Order requires the principal and one of the CPOs to pay restitution of nearly $105,000, disgorgement of approximately $86,000, and a civil monetary of almost $260,000. The principal and the other CPO are also required to pay disgorgement of approximately $105,000 but a civil monetary penalty of more than $315,000. The Order also imposes permanent trading and registration bans.
- FINRA expelled a broker dealer and barred its CEO from the securities industry for fraud and suitability violations. FINRA alleges that they recklessly sold shares of stock and promissory notes issued by the broker dealer's parent company using misleading statements and by omitting material facts. FINRA suspended a registered representative of the broker dealer for two years and fined the individual $10,000 for recommending the stock and promissory notes without a reasonable basis. The head trader was suspended for 18 months, fined $5,000, and must requalify to enter the securities industry for his role in the manipulation of the stock.

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