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Safety & Soundness

Federal Reserve Announces Release Dates for Supervisory Stress Test and Comprehensive Capital Analysis and Review Results

On February 12, 2015, the Federal Reserve Board (Federal Reserve) announced that results from the latest supervisory stress tests (DFAST) conducted as part of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act), and the results from the Comprehensive Capital Analysis and Review (CCAR) will be released on March 5, 2015 and March 11, 2015, respectively.

The results of the stress tests conducted by Federal Reserve supervisors will include data such as projected post-stress capital ratios, revenue, and loss estimates under hypothetical adverse and severely adverse scenarios previously published by the Federal Reserve and projected over a nine-quarter period. The CCAR results will include post-stress capital ratios under hypothetical adverse and severely adverse scenarios published by the Federal Reserve and will reflect the capital actions the companies plan to undertake during the nine-quarter period. In addition to the quantitative results, the Federal Reserve will indicate whether it has objected to a firm's capital plan based on qualitative grounds.

Agencies Release Tool to Calculate Risk-Based Capital Requirements for Securitization Exposures

During the week beginning February 9, 2015, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Federal Reserve Board (Federal Reserve) each announced that they have developed an automated tool to help financial institutions calculate risk-based capital requirements for securitization exposures. Institutions that use the simplified supervisory formula approach (SSFA) to calculate risk-based capital requirements for securitization exposures may, but are not required to, use the new tool to calculate capital requirements for such exposures.

The agencies note that the SSFA is a new method banks may use under the standardized approach of the revised capital rules to calculate capital requirements for securitization exposures. It is formula-based and designed to apply relatively higher capital requirements to the more risky junior tranches that are the first to absorb losses, and relatively lower requirements to the most senior tranches. The OCC announcement is in Bulletin 2015-14. The FDIC announcement appears in Financial Institution Letter 7-2015. The Federal Reserve announcement is in SR 15-4.

OCC Revises Guidance in Two Booklets of *Comptroller's Handbook*: "Personal Fiduciary Activities" and "Deposit-Related Consumer Credit"

The Office of the Comptroller of the Currency (OCC) issued two Bulletins to announce revisions to booklets in the *Comptroller's Handbook*. The revised "Personal Fiduciary Activities" booklet (Bulletin 2015-12), released on February 10, 2015, provides updated guidance for examiners on risks and expected controls over personal fiduciary activities that may arise as part of the broader fiduciary and asset management activities of national banks or federal savings associations. This booklet explains the risks inherent in offering personal fiduciary products and services and provides a framework for managing those risks.

The revised "Deposit-Related Consumer Credit" booklet (Bulletin 2015-13), released on February 11, 2015, replaces the "Check Credit" booklet and provides updated guidance and examination procedures that OCC examiners will use to assess a bank's deposit-related consumer credit activities, including overdraft protection services, deposit advance products, and selection of third-party organization and due diligence for deposit-related consumer credit products.

Senate Committee on Banking, Housing, and Urban Affairs Conducts Hearing on "Regulatory Relief for Community Banks and Credit Unions"

On February 10 and 12, 2015, the U.S. Senate Committee on Banking, Housing, and Urban Affairs (the Committee) conducted a hearing entitled, "*Regulatory Relief for Community Banks and Credit Unions*." On the first day of the hearing regulators from the Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC); National Credit Union Administration (NCUA), Conference of State Bank Supervisors (CSBS) and Federal Reserve Board (Federal Reserve) testified that they favored regulation that is appropriately tailored for community banks. "We remain alert to the importance of achieving the fundamental objectives of safety-and-soundness and consumer protection in ways that do not involve needless complexity or expense," said the FDIC representative.

The NCUA representative said the NCUA supports legislation that would allow it to examine third-party vendors of credit unions and that it also "supports legislation to allow healthy and well-managed credit unions to issue supplemental capital that will count as net worth. This legislation would help protect the Share Insurance Fund by adding a new layer of capital, in addition to retained earnings, to absorb losses at credit unions."

The representative of the CSBS said a supervisory framework based on "easily identifiable attributes of a community bank" should replace the "piecemeal approach" to regulatory relief.

On the second day of the hearing, trade association representatives of community banks and credit unions as well as a representative from a nonprofit, non-partisan research and policy organization said that regulations have increased in cost and complexity and are impacting economic growth and job creation. Many of them asked that Congress take action to:

- Provide relief from mortgage regulation to promote lending;
- Improve access to capital for community banks;
- Reform oversight and examination practices to better target the sources of financial sector risk; and
- Encourage regulators to provide relief where they can without additional congressional action.

The representative of the nonprofit research organization said that while his organization supports a regulatory framework that accommodates small institutions, it is opposed to any effort to use regulatory relief for community banks and credit unions "as a vehicle for non-deposit-taking lenders, and mid-size and large financial institutions to avoid necessary regulatory scrutiny and oversight."

Federal Reserve Governor Powell Addresses Proposals Regarding Federal Reserve

In a February 9, 2015, address at the law school of Catholic University, Federal Reserve Board Governor Jerome H. Powell discussed what he described as "misguided" proposals, which included Congressional bill, H.R.24 - the *Federal Reserve Transparency Act of 2015*. If brought to fruition, Governor Powell said the proposals would:

- Subject the Federal Reserve Board's (Federal Reserve's) conduct of monetary policy to unlimited congressional policy audits;
- Require the Federal Reserve to adopt and follow a specific equation in setting monetary policy and to face immediate congressional hearings and investigation by the Government Accountability Office (GAO) whenever it deviates from the policy dictated by that equation.
- Impose new limitations on the Federal Reserve's long-held powers to provide liquidity during a financial crisis.

Enterprise & Consumer Compliance

CFPB Report Describes Borrowers Complaints About Reverse Mortgages

The Consumer Financial Protection Bureau (CFPB or Bureau) published a report on February 9, 2015, entitled, "Snapshot of Reverse Mortgage Complaints." The report describes borrowers' complaints regarding their reverse mortgage credits that were submitted to the Bureau during the period between December 2011 and December 2014. Approximately 1,200 complaints are included in the snapshot report. The most common complaints are related to issues involving confusion over the product terms and requirements as well as dissatisfaction with loan servicing.

Coincident with the report, the CFPB issued an advisory for reverse mortgage borrowers that outlines certain limitation to the product terms and encourages borrowers to plan ahead to prevent potential financial harm to their surviving heirs.

CFPB Charges Multiple Mortgage Lenders with UDAAP Violations

On February 10, 2015, the Consumer Financial Protection Bureau (CFPB or Bureau) charged a Maryland-based nonbank mortgage lender with engaging in unfair, deceptive, or abusive acts or practices (UDAAP) in violation of the *Consumer Financial Protection Act*. The CFPB alleges the company engaged in deceptive mortgage advertising and made payments to third parties in connection with the marketing of home loans, which the Bureau alleged were illegal payments for referrals of mortgage origination business in violation of the *Real Estate Settlements Procedure Act*. Without admitting or denying the CFPB's findings, the company agreed to settle the charges and pay $2 million in civil penalties.

On February 12, 2015, the CFPB separately charged three mortgage companies for disseminating deceptive and misleading advertisements for mortgage credit products in violation of the *Mortgage Acts and Practices Rule* and the UDAAP provisions of the *Consumer Financial Protection Act*. The Bureau also charged the companies with failure to maintain copies of disseminated advertisements as required by Regulation N. Without admitting or denying the charges, two of the companies, agreed to settle the charges. One company paid fines of $225,000 and the other paid fines of $85,000. The third company has not settled the charges and the CFPB is seeking disgorgement, civil money penalties, and reimbursement of the Bureau's costs in prosecuting the company.

The Bureau stated that these three actions stem from a review conducted by the CFPB and the Federal Trade Commission of approximately 800 randomly selected mortgage-related advertisements across the country, including advertisements for mortgage loans, refinancing, and reverse mortgages.

FTC Charges Individuals in Debt Repair Scheme

The Federal Trade Commission (FTC) announced on February 11, 2015, that it filed an amended complaint in U.S. District Court in its case against a foreign-based debt relief and credit repair scheme that allegedly deceived consumers about non-existent federal programs to pay off their bills and fix poor credit. The amended complaint charges the two individuals who operated the scheme with violating the *Federal Trade Commission Act's* prohibition on deceptive acts or practices, as well as two counts of violating the *Credit Repair Organizations Act's* prohibitions on collecting advance fees before providing credit repair services and making untrue or misleading representations about their services. The individuals were not yet named when the charges were originally brought. The FTC is seeking rescission or reformation of contracts, restitution, the refund of monies paid, and disgorgement.

HUD Secretary Discusses the Mutual Mortgage Insurance Fund at Hearing of the U.S. House Committee on Financial Services

On February 11, 2015, the U.S. House Committee on Financial Services (the Committee) held a hearing entitled "The Future of Housing in America: Oversight of the Federal Housing Administration" (FHA) at which Julian Castro, Secretary, U.S. Department of Housing and Urban Development (HUD) provided testimony on the health of the Mutual Mortgage Insurance Fund (MMIF). The Committee memorandum released in advance of the hearing stated that in a November 17, 2014, report to Congress, the FHA indicated its most recent independent actuarial review showed a capital reserve ratio of 0.41 percent while Federal law mandates the MMIF maintain a capital reserve ratio of no less than 2 percent.

Secretary Castro told the Committee that following the actuary's analysis, FHA strengthened underwriting standards and overhauled its loss mitigation processes. It also increased insurance premiums five times since 2010. The result of those actions, he stated, was a $21 billion improvement to the value of the MMIF in two years. Because of these improvements, market factors, and the FHA's mission, Secretary Castro said HUD reduced annual mortgage insurance premiums by 50 basis points, from 1.35 percent to 0.85 percent on single-family mortgages issued after January 26, 2015.

Secretary Castro was criticized by some Committee members for reducing the insurance premium while the MMIF capital ratio is less than the 2 percent. Other members of the Committee supported the premium reduction, saying it provides mortgage relief for families seeking to purchase a home.

FDIC Releases Third Technical Assistance Video on the CFPB's Mortgage Rules

On February 13, 2015, the Federal Deposit Insurance Corporation (FDIC) released the third in a series of three technical assistance videos developed to assist bank employees in meeting regulatory requirements for compliance with certain mortgage rules issued by the Consumer Financial Protection Bureau (CFPB). They are intended for compliance officers and staff responsible for ensuring the bank's mortgage lending and servicing operations are in compliance with CFPB rules. The third video covers the Mortgage Servicing Rules. The second video, released in January 2015, covers the Loan Originator Compensation Rule, and the first video, released in November 2014, covers the Ability to Repay and Qualified Mortgage Rule.

Insurance

NAIC Releases Requests for Proposals to Model Valuations for Commercial and Residential Mortgage-Backed Securities

On February 11, 2015, the National Association of Insurance Commissioners (NAIC) released separate requests for proposals (RFP) for vendors to model expected losses on approximately 6,000 commercial mortgage-backed securities (CMBS) and 24,500 residential mortgage-backed securities (RMBS). This process is intended to produce valuations for state insurance regulators to set risk-based capital for CMBS and RMBS owned by U.S. insurance companies. To be considered, applicants must meet certain qualifications.

NAICS requested that responses to the RFPs be submitted by March 10, 2015. NAIC senior management will review the responses and a recommendation will be made to the NAIC Executive Committee for their consideration in mid-2015.

Capital Markets and Investment Management

SEC Issues Proposed Rules for Hedging Disclosure

On February 9, 2015, the Securities and Exchange Commission (SEC) issued proposed amendments to rules that implement Section 955 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. The rules require annual meeting proxy statement disclosure of whether employees or members of the board of directors are permitted to hedge or offset any decrease in the market value of equity securities granted to them as compensation, or held directly or indirectly by them.

The proposed rule amendments would require disclosure in proxy and information statements for the election of directors and apply to companies subject to the federal proxy rules, including smaller reporting companies, emerging growth companies, business development companies, and registered closed-end investment companies with shares listed and registered on a national securities exchange. The proposal specifies that disclosure would apply to equity securities of the company, its parent, subsidiary, or any subsidiary of any parent of the company that is registered under Section 12 of the Exchange Act. Comments on the proposed rule amendments will be accepted through April 20, 2015.

FINRA Requests Comment on a Proposal to Disseminate Data on Additional Securitized Products and to Reduce the Reporting Time Frame for These Products

On February 9, 2015, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 15-04 to solicit comment on a proposal to expand dissemination of Trade Reporting and Compliance Engine (TRACE) data to include additional securitized products, specifically, collateralized mortgage obligations (CMOs), commercial mortgage-backed securities (CMBSs) and collateralized debt obligations (CDOs). FINRA is proposing to reduce the reporting time frame for these additional securitized products from end-of-day to 45 minutes and, after nine months, to 15 minutes. FINRA also is proposing to simplify the reporting requirement for pre-issuance CMOs. The comment period expires on April 10, 2015.

CFTC Issues Time-Limited No-Action Relief from Electronic Reporting Requirements in the OCR Final Rule

The U.S. Commodity Futures Trading Commission's (CFTC) Division of Market Oversight (DMO) issued a no-action letter (CFTC Letter No. 15-03) on February 10, 2014, that provides additional time for reporting parties to comply with certain reporting requirements of the ownership and control final rule (OCR Final Rule).

The OCR Final Rule requires the electronic submission of trader identification and market participant data on new and updated reporting forms. These reporting forms collect new information to better identify participants in futures and swaps markets. CFTC Letter 15-03 extends certain relief provided under CFTC Letter No. 14-95, a no-action letter issued by the DMO on July 23, 2014, that extended certain reporting obligations under the OCR Final Rule.

The relief is subject to certain terms and conditions, including the condition that reporting parties continue to report via the legacy, non-automated submission methods until the expiration of the relief granted. Reporting parties are also expected to cooperate with staff of the CFTC's Office of Data and Technology (ODT) to provide test submissions in the form and manner requested by ODT.

Enforcement Actions

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

- The SEC announced that two former CFOs agreed to return nearly a half-million dollars in bonuses and stock sale profits they received during the period their company was determined to have committed accounting fraud. The SEC alleges that the company overstated its pre-tax earnings and made material misstatements about its revenue recognition practices. Although the CFO's were not personally charged with the company's misconduct, the CFO's are required under Section 304 of the *Sarbanes-Oxley Act* to reimburse the company for bonuses and stock sale profits received while the fraud occurred.
- The SEC charged the former CEO of a New York-based global investment services firm's brokerage subsidiary for engaging in a scheme that allowed his subordinates to cause customers to pay substantially higher amounts than the disclosed commissions for buying and selling securities. To settle the SEC's charges the CEO agreed to wrongdoing and to pay more than $783,000 in disgorgement and prejudgment interest and to be barred from the securities industry for five years. A financial penalty will be imposed at a later date.
- The SEC charged a Georgia-based individual with insider trading by exploiting nonpublic information he learned from the friend of a company executive. The SEC alleges the individual purchased shares valued at $2.2 million on the last day before the information became public. The SEC is seeking disgorgement, prejudgment interest and a civil money penalty.
- The SEC charged a New York-based investment adviser to several alternative mutual funds for maintaining $247 million of the funds' cash collateral at broker-dealer counterparties instead of the funds' custodial bank. Without admitting or denying the SEC's findings, the investment adviser firm agreed to pay a $50,000 penalty to settle the SEC's charges.
- The SEC charged a purported hedge fund manager based in New York with fraud for allegedly falsely claiming to be operating a hedge fund with approximately $100 million in assets under management and promising investors consistently high returns. The SEC is seeking an asset freeze, disgorgement, prejudgment interest, and penalties.
- The CFTC obtained a federal court Order requiring an individual and his two companies to pay more than $6.7 million in restitution and a civil monetary penalty for defrauding investors in his commodity pools, mishandling customer funds, and failing to properly register as a commodity pool operator. The court previously entered a Consent Order imposing permanent trading and registration bans. The individual is currently incarcerated in federal prison for his role in two other fraudulent investment scams.

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