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Safety & Soundness

Federal Reserve Extends Comment Period for Proposed Rule to Implement Capital Surcharges for G-SIBs

On February 26, 2015, the Federal Reserve Board (Federal Reserve) extended the comment period from March 2, 2015, to April 3, 2015, for its proposed rule to implement capital surcharges for the largest, most systemically important U.S. bank holding companies. The proposed rule would establish a methodology to identify whether a firm is a global systemically important banking organization (G-SIB) and would also establish the size of a firm's risk-based capital surcharge. The proposal is intended to further strengthen the capital positions of these institutions.

FFIEC Approves Revisions to Reporting of Risk-Weighted Assets in Call Report

On February 23, 2015, the Federal Deposit Insurance Corporation issued Financial Institution Letter (FIL-10-2015) to announce that the Federal Financial Institutions Examination Council (FFIEC) has approved revisions to the reporting of risk-weighted assets in Part II of Schedule RC-R, Regulatory Capital, of the Consolidated Reports of Condition and Income (Call Report). Subject to approval by the U.S. Office of Management and Budget, these Call Report changes will take effect on March 31, 2015.

The changes to Schedule RC-R, Part II, incorporate the standardized approach for calculating risk-weighted assets under the revised regulatory capital rules released by the banking agencies (Federal Reserve Board, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation) in July 2013.

In addition to an expanded number of risk-weight categories, other revisions to Schedule RC-R, Part II, include greater detail on loans and separate reporting of on- and off-balance sheet exposures that meet the definition of a securitization exposure.

OCC Deputy Comptroller Discusses Building Risk

In an address at the Global Association of Risk Professionals Convention on February 25, 2015, Darrin Benhart, Deputy Comptroller for Supervision Risk, discussed risks that the Office of the Comptroller of the Currency (OCC) believes are increasing, including:

- Interest rate risk. Deputy Comptroller Benhart stated, "The prolonged low interest rate environment continues to encourage strategies and actions that could contribute to future vulnerability. Banks that extend asset maturities to pick up yield, especially if they rely on the stability of non-maturity deposit funding, could face significant earnings pressure and capital erosion depending on the severity and timing of interest rate moves."
- Operational and compliance risks. "Rapidly evolving cyber threats and information technology vulnerabilities became household concerns over the last two years as the number of major breaches escalated. Cybersecurity requires heightened awareness and appropriate controls to identify and mitigate the associated risks. The same is true for *Bank Secrecy Act* and Anti-Money Laundering risks that remain prevalent across the industry as money-laundering methods evolve and electronic bank fraud grows in sophistication and volume."
- Strategic risks. Deputy Comptroller Benhart stated, "OCC examiners are focusing on this risk to ensure that banks and thrifts establish and follow appropriate risk management processes as they explore new products, partnerships, and opportunities."

Deputy Comptroller Benhart also cautioned bank management to consider concentration risk, correlation risk, and an over-reliance on historical performance when evaluating new opportunities or expanding existing competencies.

OCC Fines a Pennsylvania Bank for Bank Secrecy Act Violations

On February 27, 2015, the Office of the Comptroller of the Currency (OCC) announced that it had assessed a $500,000 civil money penalty against a Pennsylvania-based bank for violations of the *Bank Secrecy Act*. The OCC found that the bank failed to file suspicious activity reports on a timely basis in connection with certain suspicious transactions that took place between 2005 and 2009. Without admitting or denying the OCC's findings, the bank agreed to pay the penalty. The OCC took this action in coordination with the Financial Crimes Enforcement Network, which took a separate enforcement action against the bank.

Enterprise & Consumer Compliance

CFPB Issues Proposal to Temporarily Suspend Credit Card Issuers' Obligations to Submit Credit Card Agreements to the Bureau

On February 24, 2015, the Consumer Financial Protection Bureau (CFPB or Bureau) issued a proposed rule that would amend Regulation Z, which implements the *Truth in Lending Act*, and the official interpretation to that regulation in order to temporarily suspend card issuers' obligations to submit credit card agreements to the Bureau. The temporary suspension would be in effect for a period of one year while the Bureau works to develop a more streamlined and automated electronic submission system. As proposed, credit card agreement submissions that would otherwise be due to the Bureau by the first business day on or after April 30, July 31, and October 31 of 2015, and January 31, 2016, would be suspended and would resume on a quarterly basis beginning April 30, 2016. Other requirements, including card issuers' obligations to post currently-offered agreements on their own Web sites, would remain unaffected. The CFPB is accepting comments on the proposal through March 13. 2015.

House Subcommittee Holds Second Hearing on FHA Oversight

On February 26, 2015, the U.S. House of Representatives Committee on Financial Services' Subcommittee on Housing and Insurance held a hearing entitled "The Future of Housing in America: Oversight of the Federal Housing Administration – Part II." Four individuals, representing the insurance industry, a policy research and analysis institute, and a nonpartisan educational institute, provided testimony at this second in a series of hearings to examine the financial status of the Federal Housing Administration (FHA) and in particular, the health of the FHA's Mutual Mortgage Insurance Fund (MMIF). Some of their recommendations included suggestions that the FHA:

- Establish a single industry-wide standard for Qualified Mortgages and for seller concessions;
- Create "a common sense approach" to FHA loan limits in each geographic region;
- Encourage supplemental or deeper private credit enhancements beyond or in addition to private mortgage insurance standard cover;
- Use additional risk sharing to transfer real risk from the government balance sheet over to private mortgage insurers;
- Continue to explore how to improve risk estimates on FHA insurance;
- Encourage and fund broader availability of housing counseling;
- Complete work on its Quality Assurance Taxonomy and certification process, as well as complete work on creating a supplemental performance metric as a companion to the Compare Ratio that will take FHA's target mix of borrower characteristics into account when evaluating the performance of a lender's loans;

- Structure any efforts at risk sharing very deliberately to advance rather than compromise FHA's mission;
- Establish strong standards for counterparties, have the resources to adequately police these counterparties, as well as the political independence "to enter into only those agreements that make sense and to terminate partnerships with bad partners as needed;" and
- Tether risk model assumptions to line up to the GSEs in order to have consistent comparisons.

Agencies Issue Guidance Encouraging Youth Savings Programs

On February 24, 2015, the Federal Reserve Board, Federal Deposit Insurance Corporation, U.S. Department of the Treasury's Financial Crimes Enforcement Network, National Credit Union Administration, and Office of the Comptroller of the Currency (collectively, the Agencies) jointly issued guidance to encourage federally insured depository institutions to offer youth savings programs. The guidance does not create any new regulatory policy or establish new industry expectations.

The Agencies stated that the purpose of the guidance is to encourage financial institutions to develop and implement programs to expand the financial capability of youth and build opportunities for financial inclusion for more families. The guidance also addresses frequently asked questions that may arise as financial institutions collaborate with schools, local and state governments, non-profits, or corporate entities to facilitate youth savings and financial education programs.

FTC Charges Debt Relief Services Company with Deceptive Practices

On February 25, 2015, the Federal Trade Commission (FTC) charged an Alabama-based debt relief services company and related entities as well as two company officers with violating the *Federal Trade Commission Act*, which prohibits deceptive acts and practices, and the FTC's *Telemarketing and Consumer Fraud and Abuse Prevention Act* (Telemarketing Act), which prohibits abusive and deceptive telemarketing practices. The company used the Internet, radio, and telemarketing to advertise debt relief services to individuals with payday loans. The FTC alleges that the company advised consumers to stop making direct payments to their lenders and instead to pay money to their company, promising that within four to six months, the loans would be paid off. The FTC alleges that the companies provide little or no debt relief services for their clients, and their limited actions do not generally eliminate or even reduce most clients' payday loans.

The complaint is the FTC's first against a company promising payday loan debt relief. The FTC is seeking a permanent injunction, disgorgement, and restitution.

Capital Markets and Investment Management

CFTC Reopens Comment Period for Rulemaking Proposals on Position Limits for Physical Commodity Derivatives and Aggregation

The U.S. Commodity Futures Trading Commission (CFTC) has reopened the comment periods for the two Position Limit rulemakings in order to provide commenters with sufficient time to respond to questions raised and points made during the CFTC's Energy and Environmental Markets Advisory Committee (EEMAC) meeting on February 26, 2015. The comment periods will close on March 28, 2015.

In addition, and in connection with the EEMAC meeting, the CFTC is providing counts of the unique persons over specified percentages of the 28 proposed position limit levels (currently provided in Table 11 of the Position Limits

Proposal based on counts from the period of January 1, 2011 to December 31, 2012 period) in a new table, Table 11a, based on counts from the period of January 1, 2013 to December 31, 2014. The extended comment period is also intended to provide an opportunity to comment on Table 11a.

OFR Launches Financial Markets Monitor

On February 25, 2015, the Office of Financial Research (OFR) launched a Financial Markets Monitor that summarizes major developments and emerging trends in global capital markets. The monitor is designed as a tool for financial stability assessment. The OFR stated that it is making the monitor public in order to increase transparency and enhance the availability of financial information. OFR also indicated that it supplements its analysis with market intelligence that is "essential for timely spotting of emerging vulnerabilities and threats to financial stability." The OFR makes summaries of this analysis available to the Financial Stability Oversight Council and its Systemic Risk Committee.

CFTC Chairman Massad Addresses Coalition for Derivatives End Users

On February 26, 2015, Timothy G. Massad, Chairman of the Commodity Futures Trading Commission (CFTC), addressed the Coalition for Derivatives End-Users. His presentation, entitled "Making Sure the Markets Work for Commercial End-Users" focused on the CFTC's activities over the past eight months and what it expects to do in the months ahead. He said the actions the CFTC is taking with respect to the proposed rule on margin for uncleared swaps reflect Congressional direction and that the proposed rule reflects three of the most important priorities facing the CFTC:

- To bring the swaps market out of the shadows and address the potential for excessive risks coming out of that market;
- To address the needs of end-users to make sure they can continue to use the derivatives markets effectively; and
- To harmonize the CFTC's proposed rule as much as possible with the rules on margin for uncleared swaps of other jurisdictions.

Chairman Massad also stated that the rule on margin for uncleared swaps is important because "margin will continue to be a significant tool to mitigate the risk of default and, therefore, the potential risk to the financial system as a whole."

Other risks and challenges on which the CFTC is focusing include:

- The increased use of automated trading strategies and their impact on the derivatives markets;
- Cybersecurity; and
- Whether the private companies that run the core infrastructure under the CFTC's jurisdiction are doing adequate testing themselves of their cyber protections.

Enforcement Actions

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

- The SEC charged a company with violating the *Foreign Corrupt Practices Act* (FCPA) when it failed to prevent or detect more than $3.2 million in illegal payments during a four-year period due to inadequate FCPA compliance controls at its foreign subsidiaries. Without admitting or denying the SEC's charges, the company agreed to pay more than $16 million in disgorgement and prejudgment interest.
- The SEC charged a purported venture capital fund manager with fraudulently using money from three investment funds to pay fictitious returns to investors in a different fund. The SEC obtained an emergency asset freeze to halt the Ponzi-like scheme at the New York-based firm. The SEC is seeking preliminary relief and a temporary restraining order, permanent injunctions, disgorgement, and a financial penalty. The SEC's complaint names several relief defendants associated with the firm.
- The CFTC announced that an individual who orchestrated a $7.4 million commodity pool investment scam was sentenced to more than eight years in federal prison for charges related to fraudulent misconduct. The individual was charged with misappropriating approximately $1.7 million from pool participants.

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