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Safety & Soundness

Basel Committee Releases Updated Progress Report on Adoption of the Basel Regulatory Framework

On April 27, 2015, the Bank for International Settlements Basel Committee on Banking Supervision (Basel Committee) released an updated progress report on adoption of the Basel regulatory framework. The report provides a high-level view of Basel Committee members' progress in adopting Basel II, Basel 2.5 and Basel III standards as of March 2015.

The report focuses on the status of domestic rule-making processes to ensure that the Basel standards are transformed into national law or regulation according to the internationally agreed timeframes. The report is based on information provided by individual members as part of the Basel Committee's Regulatory Consistency Assessment Program (RCAP). It includes the status of adoption of the risk-based capital standards, the standards for global and domestic systemically important banks (SIBs), the Basel III leverage ratio and the liquidity coverage ratio (LCR).

Federal Reserve Board Governor Tarullo Discusses Tailoring Community Bank Regulation and Supervision

On April 30, 2015, Federal Reserve Board Governor Daniel K. Tarullo addressed the Independent Community Bankers of America's 2015 Washington Policy Summit about tailoring community bank regulation and supervision, saying "differentiation needs to be explicit both in the analytic foundations of our prudential system and in the application of that system to banking organizations."

Governor Tarullo said that community banks do not pose risks to the financial system and suggested that smaller institutions be allowed to opt into a simpler set of risk-weighted capital requirements in exchange for a higher minimum required ratio. "Because so many smaller community banks maintain capital levels well above minimum regulatory levels anyway, the tradeoff of higher requirements for a simpler approach may be promising."

He also stated that "the Volcker rule and the Dodd-Frank Act incentive compensation provisions present almost prototypical cases in which minimal potential safety and soundness benefits are outweighed by the compliance costs faced by those thousands of banks. It would be preferable to relieve both supervisors and community banks from examining compliance with these kinds of requirements in order to concentrate resources on the real issues presently faced by these institutions, such as cybersecurity and interest rate risks."

Enterprise & Consumer Compliance

Agencies Adopt Final Rule on Minimum Requirements for Appraisal Management Companies

On April 30, 2015, the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (Federal Reserve), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), Bureau of Consumer Financial Protection (CFPB) and Federal Housing Finance Agency (FHFA) adopted a final rule that implements minimum requirements for state registration and supervision of appraisal management companies (AMCs).

The final rule:

- Allows states to elect to register and supervise AMCs;
- Applies the AMC minimum requirements to states that elect to register and supervise AMCs;
- Does not compel a state to establish an AMC registration and supervision program. However, states that have not established a regulatory structure within 36 months of the effective date of the final rule, are barred from providing appraisal management services for federally related transactions by section 1124 of Title XI of the *Financial Institution Reform, Recovery, and Enforcement Act*, as amended by the *Dodd-Frank Wall Street Reform and Consumer Protection Act*;
- Requires participating states to apply certain minimum requirements in the registration and supervision of AMCs;
- Requires AMCs that are owned and controlled by an insured depository institution and regulated by a federal agency (federally regulated AMC) to meet the same minimum requirements as state-regulated AMCs except for the requirement to register with a state; and
- Implements the requirement for states to report to the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) the information required by the ASC to administer the new national registry of AMCs (AMC National Registry).

In conjunction with this implementation, the FDIC is integrating its appraisal regulations for state nonmember banks and state savings associations.

The final rule will become effective 60 days after publication in the *Federal Register*. The compliance date for federally regulated AMCs is no later than 12 months from the effective date of this rule. A participating state will specify the compliance deadline for state-regulated AMCs.

CFPB Releases Two Reports: *Third Annual Fair Lending Report* and *Snapshot of Complaints Received from Servicemembers, Veterans and Their Families*

In an April 28, 2015 blog post, the Consumer Financial Protection Bureau (CFPB or Bureau) announced the release of its third annual *Fair Lending Report*. The report describes the Bureau's fair lending activities over the past year related to supervision, enforcement, rulemaking, interagency coordination, outreach and interagency reporting. The CFPB reports that during that time, its fair lending supervisory and public enforcement actions directed institutions to provide approximately $224 million in remediation to about 303,000 consumers.

In an April 27, 2015 blog post, the Bureau announced the release of its third *Snapshot of Complaints Received from Servicemembers, Veterans and Their Families*. This report details the data and trends from consumer complaints the Bureau received from members of the military community since July 2011. The CFPB highlights that:

- Debt collection complaints have continued to rise since the last report, and now make up 39 percent of total complaints--the largest category of complaints from the military community.
- Credit reporting remains a top category of concern, with 72 percent of these complaints involving incorrect information on credit reports.
- Forty-nine percent of student loans complaints involve problems dealing with a lender or servicer, including complaints related to the failure of some to provide servicemembers with their *Servicemembers Civil Relief Act* rights.

FTC Charges Mortgage Relief Services Operation with Fraud

On April 30, 2015, the Federal Trade Commission (FTC) charged five individuals and their interrelated entities with operating a mortgage relief operation scam in violation of the *Federal Trade Commission Act*, the FTC's Mortgage Assistance Relief Services Rule (MARS) and its Telemarketing Sales Rule (TSR). Another individual is charged with holding money and assets received from the scam. A federal court halted the operation at the request of the FTC.

According to the FTC's complaint, the individuals targeted consumers facing foreclosure, especially those who had failed to get relief from their lenders. The FTC alleges they falsely claimed to be "nonprofit" with government ties, sending mail with what appeared to be an official government seal, and indicating that the recipients might be eligible for a "New 2014 Home Affordable Modification Program" (HAMP 2). The complaint charges the individuals kept the money, leading some homeowners into bankruptcy and foreclosure. The FTC seeks temporary, preliminary, and permanent injunctions, rescission or reformation of contracts, restitution, the refund of monies paid and disgorgement.

CFPB Charges Bank for Illegal Overdraft Fees

On April 30, the Consumer Financial Protection Bureau (CFPB or Bureau) charged a financial institution in connection with its overdraft practices. The Bureau alleges the bank failed to obtain an affirmative "opt-in" from certain of its customers before charging them overdraft fees for ATM and one-time debit card transactions, in violation of the *Electronic Fund Transfer Act*. The Bureau also alleges the bank deceptively represented in advertisements and in information provided to consumers that it would not charge overdraft fees in connection with ATM and one-time debit card transactions without an opt-in from customers, which is a violation of the *Consumer Financial Protection Act* (CFPA). Further, the Bureau charged that the bank deceptively represented in information provided to consumers that it would not charge overdraft fees in connection with loan repayments under the bank's deposit advance product, which also is a violation of the CFPA.

The bank agreed to settle the charges by paying a $7.5 million penalty, correcting errors on customers' credit reports resulting from the overdraft fees, and hiring an independent consultant to identify all remaining consumers who were charged the illegal fees and then reimburse those customers. The bank had previously voluntarily reimbursed nearly $49 million in customer fees related to the improper overdraft charges.

CFPB and Maryland Attorney General Charge Title Company Executives in Mortgage Kickback Scheme

The Consumer Financial Protection Bureau (CFPB) and the Maryland Attorney General charged a Maryland-based title company's executives and some of its loan officers with participating in a mortgage-kickback scheme, in violation of the *Real Estate Settlement Procedures Act* (RESPA). The Bureau and the state of Maryland allege that the individuals traded cash and marketing services in exchange for mortgage referrals and funneled kickbacks through a network of companies. Under proposed consent orders, five of the six individuals would be banned from the mortgage industry and required to pay a total of $662,500 in redress and penalties. Legal action will proceed against the remaining individual. Two banks received enforcement actions earlier in the year for their role in the scheme.

CFPB Charges Land Development Company for Marketing Violations under the *Consumer Financial Protection Act*

On May 1, 2015, the Consumer Financial Protection Bureau (CFPB or Bureau) charged a Florida-based land-development company and four individuals involved in a property development project with violations of the *Interstate Land Sales Full Disclosure Act* (ILSA). The CFPB alleges the company and the individuals, among other things, misrepresented in marketing materials and in U.S. Department of Housing and Urban Development-registered property reports that they would maintain the roads until they were accepted by the county.

The company and the individuals settled the Bureau's charges and admitted liability for their conduct. The CFPB has ordered the company to repair certain roads in the development to the CFPB's satisfaction. The company must submit to the CFPB an engineering report prepared by an independent consultant and detailed steps for addressing the work described in the engineering report.

Insurance

Senate Committee on Banking, Housing and Urban Affairs Conducts Hearing on Insurance Regulation

On April 28, 2015, the U.S. Senate Committee on Banking, Housing, and Urban Affairs conducted a hearing entitled, "The State of the Insurance Industry and Insurance Regulation." Testifying at the hearing were representatives of the Financial Stability Oversight Council (FSOC), the Federal Reserve Board (Federal Reserve), the Federal Insurance Office (FIO) of the U. S. Department of the Treasury, and the National Association of Insurance Commissioners (NAICS). Global standards for the insurance were discussed.

In his opening remarks, Committee Chair Senator Richard Shelby said the U.S. insurance industry is structured and operates differently than its European counterparts and that U.S. representatives to these international discussions "must ensure that their positions, and especially any resulting agreements, recognize these differences and do not disadvantage U.S. companies."

The witnesses spoke in favor of global standards but said they would support only those standards that are appropriate for U.S. consumers. Comments included:

- "We should be cautious about ongoing initiatives by international bodies that could be used to influence policy decisions that Congress has either expressly delegated to the states, or that are the prerogative of the Congress itself…I believe that the outcome of any such commitment should be consistent with proven effective state-based regulation and that any resulting agreement should contain express reservations preserving the discretion as to whether, or how, those standards will be implemented in the United States."--FSOC
- "Consistent global standards can help limit regulatory arbitrage and jurisdiction shopping and can promote financial stability. We recognize, however, that international standards cannot be imposed on U.S. firms by an international body; rather these standards apply in the United States only when adopted by the appropriate U.S. regulators in accordance with applicable rulemaking procedures conducted here."–Federal Reserve
- "In all of our work, both internationally and domestically, our priorities will remain in the best interests of U.S. consumers, U.S. insurers, the U.S. economy, and jobs for the American people."--FIO
- "As discussions move forward regarding the development of domestic and global capital rules, state insurance regulators continue to oppose imposing a one-size-fits-all bank-centric set of regulations on insurers and instead focus on the importance of company and product specific analysis and examination... We are concerned that taking a

uniform regulatory approach that treats insurers more like banks may actually encourage new risk-taking in the insurance industry." --NAICS

Senate Subcommittee Examines Insurance Capital Rules and the FSOC Process

The U.S. Senate Committee on Banking, Housing, and Urban Affairs Subcommittee on Securities, Insurance, and Investment conducted a hearing on April 30, 2015, entitled "Examining Insurance Capital Rules and FSOC Process." Two executives from insurance firms representing separate industry trade groups at the hearing testified that the Financial Stability Oversight Council (FSOC) should be more transparent with its designation process despite recent reforms. A law professor countered each of their testimonies, saying FSOC "has done a reasonable job in promoting the transparency of its designation process given the multi-factored and complex nature of its responsibility."

The executives also said the insurance industry supports full implementation of the *Insurance Capital Standards Clarification Act*. "Congress has an essential role in overseeing the increasing federal and international intrusion into the well-established state-based system of insurance regulation, encouraging greater collaboration and transparency in standard-setting discussions, and providing clear guidance to federal officials as they interface with a state-based regulatory system and international globalization pressures."

Capital Markets and Investment Management

SEC Proposes Cross-Border Security-Based Swap Rules Regarding Activity in the U.S.

On April 29, 2015, the Securities and Exchange Commission (SEC) issued proposed amendments and a re-proposed rule to address the application of certain provisions of the *Securities Exchange Act* (Exchange Act) that were added by Title VII of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) to cross-border security-based swap activities. The rules would require a non-U.S. company that uses U.S. personnel to arrange, negotiate or execute a transaction in connection with its dealing activity to include that transaction in determining whether it is required to register as a security-based swap dealer. The rules are intended to provide increased transparency and enhanced oversight.

The specified transactions would also be subject to the reporting and public dissemination requirements under Regulation SBSR and, if the non-U.S. firm is a registered security-based swap dealer, to the external business conduct standards of Title VII. The proposed rules also address certain other matters, including who is required to report certain transactions involving non-U.S. persons. The comment period for the proposed rules will close 60 days after they are published in the *Federal Register*.

SEC Proposes Rules to Require Companies to Disclose the Relationship Between Executive Pay and Financial Performance

On April 29, 2015, the Securities and Exchange Commission (SEC) issued proposed rules that would require companies to disclose the relationship between executive compensation and the financial performance of their company. The proposed rules are intended to provide greater transparency and allow shareholders to be better informed when they vote to elect directors and in connection with advisory votes on executive compensation.

The proposed rules would require a company to:

- Disclose executive pay and performance information for itself and companies in a peer group in a table and to tag the information in an interactive data format.
- Disclose executive compensation actually paid for its principal executive officer using the amount already disclosed in the summary compensation table required in the proxy statement, making adjustments to the amounts included for pensions and equity awards. The amount disclosed for the remaining executive officers would be the average compensation actually paid to those executives.
- Report its total shareholder return (TSR) and the TSR of companies in a peer group as the measure of performance.

All companies would be required to disclose the information for the last five fiscal years, except for smaller reporting companies, which would only be required to provide disclosure for the last three fiscal years. The proposed rules would provide phase-in periods for these requirements. Emerging growth companies and foreign private issuers would not be covered by the proposed disclosure requirements. The SEC will accept comments on the proposed rules for 60 days after publication in the *Federal Register.*

SEC Announces Award to Whistleblower in First Retaliation Case

On April 28, 2015, the Securities and Exchange Commission (SEC) announced a maximum whistleblower award payment of 30 percent of amounts collected in connection with the SEC's first retaliation case. The whistleblower will receive more than $600,000 for providing key original information that led to the successful SEC enforcement action against a capital management corporation.

The SEC charged the corporation with retaliating against the whistleblower after it learned that the whistleblower reported potential misconduct to the SEC. The SEC stated that the corporation immediately engaged in a series of retaliatory actions against the whistleblower including removing the whistleblower from the whistleblower's then-current position, tasking the whistleblower with investigating the very conduct the whistleblower reported to the SEC, changing the whistleblower's job function, stripping the whistleblower of supervisory responsibilities, and otherwise marginalizing the whistleblower.

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 California-based hedge fund advisory firm and two executives involved in improper allocations of fund assets to pay undisclosed operating expenses. The SEC also charged an accountant who conducted the outside audit of the firm with approving misleading financial statements that the firm sent to investors. Without admitting or denying the SEC's findings, the firm, both executives, and the auditor agreed to settle the charges. The executives agreed to pay disgorgement with prejudgment interest and a $200,000 penalty, and to accept a one-year industry bar. The outside auditor agreed to pay a $75,000 penalty and be suspended from practicing as an accountant on behalf of any entity regulated by the SEC for three years.
- The CFTC charged a Nevada-based limited liability corporation and its owner and manager with engaging in illegal, off-exchange transactions with retail customers on a leveraged, margined, or financed basis. The CFTC is seeking disgorgement, civil monetary penalties, permanent registration and trading bans, and a permanent injunction.
- The CFTC charged a Florida-based telemarketing firm and its owner, manager, and controlling person for soliciting retail customers by telephone to engage in leveraged, margined, or financed transactions. The company agreed to settle the charges and pay a $100,000 civil monetary penalty and $447,342 in restitution, and accept permanent bans from registering, trading, soliciting, and engaging in other CFTC-regulated activities.
- The CFTC charged an individual who resides in North Carolina with off-exchange foreign currency commodity pool fraud. The individual admitted the CFTC's findings and settled the charges by agreeing to pay a $1.67 million civil monetary penalty and restitution and accept permanent trading and registration bans. The individual is also charged in a related criminal action.

- The CFTC charged two residents of California and their companies with fraud, misappropriation, engaging in illegal off-exchange transactions, and registration violations. A federal court entered a default Order that requires them to pay a $700,000 civil monetary penalty and $448,371 in restitution. The Order also imposes permanent trading and registration bans.
- The CFTC charged a North Carolina-based commodity pool operator (CPO) and two firms controlled by the CPO with operating a fraudulent scheme in which they allegedly solicited more than $2.4 million from approximately 24 individuals to participate in a commodity pool that traded leveraged or margined retail off-exchange foreign currency contracts. The CFTC alleges that they used pool participant funds to pay purported trading profits and supposedly returned pool participants' principal in the manner of a Ponzi scheme. A federal judge entered an emergency restraining Order freezing their assets and prohibiting the destruction or concealment of their books and records. The CFTC is seeking disgorgement, restitution, civil monetary penalties, trading and registration bans, and permanent injunctions.
- The CFTC charged a New York-based, CFTC-registered Futures Commission Merchant for failing to provide and maintain an adequate program of supervision and for failing to diligently supervise its employees on one occasion in violation of CFTC Regulation 166.3. The FCM settled the charges and agreed to pay a $140,000 civil monetary penalty without admitting or denying the charges.
- FINRA charged a New York-based full-service broker-dealer, its CEO and a registered representative for fraudulent sales of equity interests in the firm and promissory notes. FINRA issued a temporary cease and desist consent order based on its concern regarding ongoing customer harm and depletion of investor assets prior to the completion of a formal disciplinary proceeding against the firm and the individuals. FINRA also permanently barred the registered representative from the securities industry for fraud and for improperly using $77,000 of investor funds for personal expenses in a related offering.

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