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The Washington Report

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In This Issue

Safety & Soundness

Comptroller Announces Initiative to Identify Innovations and Emerging Trends

Comptroller of the Currency Thomas J. Curry discussed the benefits and risks of new and innovative products and services in the financial system, along with the role that banks play in the process, in remarks provided before the Federal Home Loan Bank of Chicago on August 7, 2015. Noting that "a large share" of current innovation in the area of financial technology is being developed outside of the regulated banking industry, he announced the launch of a new OCC initiative intended to explore the "perception that it's too difficult to get new ideas through the regulatory approval process." He said the OCC wanted to develop a framework to identify and evaluate new and innovative financial products and services. [Speech]

OCC Guidance Addresses Quantitative Limits on Physical Commodity Transactions

The Office of the Comptroller of the Currency (OCC) released Bulletin 2015-35 on August 4, 2015 to clarify for national banks and federal branches or agencies of a foreign bank (collectively, banks) the OCC's expectations regarding the extent to which they may make or take delivery of a physical commodity to hedge commodity derivatives transactions. In particular, the Bulletin provides calculation guidance for determining whether physical hedging activities are a nominal portion of risk management activities. The OCC considers physical hedging positions to be nominal only when the bank's commodity position is no more than 5 percent of the notional value of the bank's derivatives that 1) are in that same particular commodity, and 2) allow for physical settlement within 30 days. The bulletin supplements OCC Banking Circular 277 (BC-277), *Risk Management of Financial Derivatives*, released in October 1993. [Bulletin 2015-35]

Enterprise & Consumer Compliance

CFPB Releases Compliance Bulletin on Cancellation and Termination of PMI

The Consumer Financial Protection Bureau (CFPB or Bureau) released Bulletin 2015-03 on August 4, 2015, to provide guidance to residential mortgage servicers and subservicers (collectively, servicers) regarding compliance with the private mortgage insurance (PMI) cancellation and termination provisions of the *Homeowners Protection Act of 1998* (HPA). Broadly, the HPA requires automatic termination of borrower-paid PMI when the mortgage balance is first scheduled to reach 78 percent of the original value of the property securing the loan. Bulletin 2015-03 explains HPA requirements and describes examples from CFPB's supervisory experience of PMI cancellation and termination procedures that violate the HPA or create a substantial risk of noncompliance. The CFPB states the Bulletin summarizes existing requirements and does not establish any new, or revise any existing, recordkeeping, reporting, or disclosure requirements on covered entities or members of the public. [Press Statement] [Bulletin 2015-03]

CFPB Releases Report on Pilot Program for eClosings

The Consumer Financial Protection Bureau (CFPB or Bureau) released the results of a pilot program to study the impact of eClosings, which are technology-enabled mortgage closings that allow consumers to view and sign documents electronically. The report, *Leveraging technology to empower mortgage consumers at closing*, highlights the CFPB's finding that generally consumers had a more favorable experience when using the eClosing process. The project took place over a four-month period and involved seven lenders, more than 3,000 consumers, four technology companies, and a number of settlement agents and real estate professionals. Some consumers used traditional paper documents, others used a complete eClosing process, and others used a hybrid of electronic resources and paper documents.
[Press Statement] [eClosings Report]

CFPB Announces UDAAP Enforcement Action Against Internet Payday Lender

The Consumer Financial Protection Bureau (CFPB or Bureau) announced on August 4, 2015, that it had filed a complaint in federal district court against a group of commonly controlled companies to address the CFPB's findings the companies violated the unfair, deceptive, or abusive acts of practices (UDAAP) provisions of the *Consumer Financial Protection Act* (CFPA). The companies originated and collected payday loans over the Internet in all 50 states, including certain states where the loans are deemed void because they violate state usury or licensing agreements. The CFPB alleges the companies made false threats to consumers, deceived consumers about their obligations with regard to the debts, and used illegal wage–assignment clauses. The CFPB is seeking restitution for consumers in states where their loans were void or where they were not required to repay the loans, monetary penalties, and other additional relief to be determined by the court.

Capital Markets and Investment Management

SEC Adopts Final Rule Governing the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants

On August 5, 2015, the Securities and Exchange Commission (SEC) announced that it had adopted final rules to provide a comprehensive process for security-based swap dealers and major security-based swap participants to register with the SEC. The new rules, which are required by Title VII of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, address all aspects of the registration regime, including setting forth the set of information required to be provided and kept up to date by a registrant, and requirements for senior officers to make certifications about the registrant's policies and procedures for compliance with the federal securities laws. The new rules will be effective 60 days after publication in the *Federal Register*.

Concurrent with release of the final rule, the SEC also released a proposed new rule of practice to create a process for security-based swap dealers and major security-based swap participants to apply to the SEC for permission to continue to have certain persons subject to statutory disqualifications involved in effecting their security-based swap transactions if such continuation is consistent with the public interest. Comments on the proposal will be accepted for a period of 60 days following publication in the *Federal Register*. [Press Statement] [Final Rule] [Proposed Rule]

SEC Adopts Final Rule to Require Pay Ratio Disclosure

The Securities and Exchange Commission (SEC) announced on August 5, 2015, that, pursuant to the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, it had adopted a final rule to amend its existing executive compensation disclosure rules to require companies to disclose: the median of the annual total compensation of all its employees, except the Chief Executive Officer (CEO); the annual total compensation of its CEO; and the ratio of those two amounts. The disclosure is required in any annual report, proxy or information statement, or registration statement that requires executive compensation disclosure pursuant to Item 402 of Regulation S-K. The method to calculate these annual total compensation amounts must be the same for the compensation of the median employee and the CEO. In addition, companies will be required to describe the methodology used to identify the median employee, and any material assumptions, adjustments, or estimates used to identify the median employee or to determine annual total compensation. The rule will become effective 60 days after publication in the Federal Register and compliance is required for the first fiscal year beginning on or after January 1, 2017. Smaller reporting companies, foreign private issuers, MJDS (i.e., multijurisdictional disclosure system) filers, emerging growth companies, and registered investment companies are not subject to the requirement. [Press Statement] [Final Rule]

IOSCO Publishes Final Report on Post-Trade Transparency in CDS Market

The International Organization of Securities Commissions (IOSCO) published its final report on *Post-Trade Transparency in the Credit Default Swaps Market*. The report analyzes the potential impact of mandatory post-trade transparency in the credit default swaps (CDS) market and concludes that greater post-trade transparency in the CDS market—including making the price and volume of individual transactions publicly available—would be valuable to market participants and other market observers. [Press Statement] [Report]

Enforcement Actions

The Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), and the Financial Industry Regulatory Authority (FINRA) announced the following enforcement actions in the past week:

- The SEC filed charges against a company, its former Chief Financial Officer, its current Chief Operating Officer, and its former independent auditor with inflating the values of certain assets resulting in fraudulent financial reports. The SEC is seeking to obtain cease-and-desist orders, civil monetary penalties, the return of allegedly ill-gotten gains from the company and two of the individuals, and director and public accounting bars.
- The CFTC announced that it had taken an enforcement action against an individual and his company (both registered with the CFTC) for making false, fictitious, or fraudulent statements or omissions to the National Futures Association (NFA) in statutorily required reports and during an NFA audit, in violation of the *Commodity Exchange Act* (CEA). The CFTC is seeking disgorgement of ill-gotten gains, restitution to defrauded customers, a civil monetary penalty, permanent trading and registration bans.
- The CFTC issued an Order requiring a registered Futures Commission Merchant and provisionally registered swap dealer to pay a $300,000 civil monetary penalty for failing to hold sufficient U.S. Dollars in segregated accounts in the United States to meet all of its U.S. Dollar obligations to cleared swaps customers. The Order also finds that the firm failed to implement adequate procedures to comply with the currency denomination requirements for cleared swaps customer collateral and did not train and supervise its personnel to ensure compliance with CFTC regulations, and requires the firm to cease and desist from violating CFTC Regulations, as charged.
- FINRA fined a company $950,000 for improperly selling unregistered penny stocks and for related supervisory failures, and for failing to implement anti-money laundering (AML) policies and procedures. The Chief Compliance Officer and the AML Compliance Officer separately agreed to suspensions and fines related to supervisory failures.
- FINRA announced that it has permanently barred a former registered representative of securities firm from the securities industry for churning customers' accounts and other securities rule violations. The individual also failed to report a dozen unsatisfied judgments and liens on his U4 Registration Form as required by FINRA rules.

Contact Us

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