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Enterprise & Consumer Compliance

FDIC Releases Guidance on Final Amendments to the Military Lending Act

The Federal Deposit Insurance Corporation (FDIC) released Financial Institution Letter 37-2015 to remind financial institutions that the Department of Labor (DOL) finalized amendments to the *Military Lending Act* (MLA) in July 2015 that will, in part, require compliance beginning October 3, 2016. Among other things, the amendments include extension of the MLA protections to a wider range of credit products, including credit cards, as well as modification of the Military Annual Percentage Rate (MAPR) to include fees for credit-related ancillary products sold in connection with the credit transaction, financial charges associated with consumer credit, and certain application and participation fees. The MAPR is capped at 36 percent. [\[FIL 37-2015\]](#) [\[DOL MLA Final Rule\]](#)

CPMI and World Bank Group Release Consultative Paper on Financial Inclusion Policies and Payment Systems

The Bank for International Settlements (BIS) announced that the Committee on Payments and Market Infrastructures (CPMI) and the World Bank Group jointly released a consultative paper on September 9, 2015, focusing on financial inclusion and payment systems. In particular, the paper examines the demand- and supply-side factors impacting efforts to expand financial inclusion through payment systems as well as measures that could be taken to address these issues. The report suggests that, from a payments perspective, financial inclusion should be aimed at achieving certain key policy objectives – namely, that all individuals and businesses should have access to and be able to use at least one transaction account operated by a regulated payment service provider to: i) perform most, if not all, of their payment needs; ii) safely store some value; and iii) serve as a gateway to other financial services. The report outlines seven guiding principles with key action steps that are intended to assist countries seeking to advance financial inclusion in their markets through payments. Comments are requested by December 7, 2015. [\[Press Statement\]](#) [\[CPMI World Bank Consultative Paper\]](#)

Enforcement Actions

The Consumer Financial Protection Bureau (CFPB or Bureau) announced on September 9, 2015, that it had taken enforcement actions against two companies that are debt buyers and collectors to address the CFPB's findings the companies had engaged in debt collection practices in violation of the *Fair Debt Collection Practices Act* (FDCPA), the *Federal Credit Reporting Act* (FCRA) and the unfair, deceptive, or abusive acts or practices provisions of the *Consumer Financial Protection Act* (CFPA). Without admitting or denying any of the findings, the companies each agreed to enter into a Consent Order with the CFPB that required one to pay civil money penalties of \$10 million, refund of up to \$42 million to consumers, and cease collections on certain debt with a face value of \$125 million. The other company similarly agreed to pay civil money penalties of \$8 million, refund up to \$19 million to consumers, and cease to collect on certain debts with a face value of \$3 million. The companies also agreed to stop reselling debts to other debt collectors.

The Federal Deposit Insurance Corporation (FDIC) announced that it had reached a settlement with two related insured state nonmember banks to address the FDIC's charges the banks engaged in deceptive practices related to the marketing and servicing of credit card "add-on" products in violation of Section 5 of the *Federal Trade Commission Act*. The FDIC alleges the banks made material misrepresentations and omissions regarding features of the debt cancellation and payment protection products they offered in association with the credit cards, which were offered through national retailers. One bank has agreed to pay a civil money penalty of \$2 million and restitution of approximately \$53 million to harmed consumers. The other bank agreed to pay a civil money penalty of \$450,000 and restitution of \$8.5 million.

Insurance

IAIS Launches Thematic Self-Assessment and Peer Review

On September 8, 2015, the International Association of Insurance Supervisors (IAIS) announced the launch of a thematic self-assessment and peer review survey on solvency and solvency-related issues, which addresses Insurance Core Principles 14 (Valuation), 15 (Investment), 16 (Enterprise Risk Management), 17 (Capital Adequacy), and 20 (Public Disclosure). Submissions to the survey are requested by October 6, 2015. Additional information is available on the IAIS Web site. [\[Press Statement\]](#)

Capital Markets and Investment Management

CFTC Approves New Rule Requiring Registered IBs, CTAs, and CTAs to Become Members of a Registered Futures Association

The Commodity Futures Trading Commission (CFTC) announced on September 10, 2015, the adoption of a new rule that requires all persons registered with the CFTC as introducing brokers (IBs) or commodity pool operators (CPOs), and persons registered with the CFTC as commodity trading advisors (CTAs), except those persons who are exempt from registration as a CTA pursuant to CFTC regulation 4.14(a)(9), to become and remain a member of at least one registered futures association. The final rule becomes effective November 13, 2015, and compliance is required no later than December 31, 2015. The CFTC notes that the National Futures Association is currently the only registered futures association. [\[Press Statement\]](#) [\[Final Rule\]](#)

CFTC Announces New Investor Tool – RED List

The Commodity Futures Trading Commission (CFTC) announced the launch of its “RED List” on September 9, 2015. The “RED List,” which is an acronym for “Registration Deficient List,” is a new tool intended to allow investors to identify unregistered foreign entities that the CFTC has reason to believe may be engaged in illegally soliciting and/or accepting funds from U.S. residents. [\[Press Statement\]](#)

OFR Releases Working Paper on the Repo and Securities Lending Markets

The Office of Financial Research (OFR) released a working paper that is intended to serve as a reference guide for the U.S. repurchase agreement, or repo, and the securities lending markets. The working paper gives an overview of the repo and securities lending markets, including the institutional structure, role of market participants, vulnerabilities and potential systemic risks, and recent efforts to limit those risks. The paper also provides an overview of existing data sources, highlighting specific shortcomings related to data standards and data quality, and steps regulators are taking to improve data coverage. [\[Press Statement\]](#) [\[OFR Working Paper\]](#)

Enforcement Actions

Some of the enforcement actions announced in the past week by the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), include the following:

- The SEC charged five individuals with fraud for misleading investors and misappropriating virtually all of the investors' funds. The SEC seeks disgorgement of ill-gotten gains plus prejudgment interest and penalties as well as permanent injunctive relief.
- The SEC announced fraud charges against a Wall Street CEO, his company, family members, and business associates and accused them of secretly obtaining control and manipulating the stock of foreign-based companies they were purportedly guiding through the process of raising capital and becoming publicly-traded in the United States. The SEC's complaint alleges violations or the aiding and abetting of violations of the antifraud provisions and the disclosure and reporting provisions of the federal securities laws.
- The SEC charged an audit firm with dismissing red flags and issuing false and misleading unqualified audit opinions about the financial statements of a public company. The firm agreed to admit wrongdoing, pay disgorgement of its audit fees and interest totaling approximately \$600,000, and pay a \$1.5 million penalty in addition to complying with undertakings related to its quality controls.
- The SEC announced that it had reached an agreement with a company to pay \$15 million in settlement for charges of accounting fraud. The SEC alleges principals in the company engaged in a scheme to fabricate revenues and avoid booking certain expenses in order to meet analysts' estimates for a key financial metric. The actions resulted in an overstatement of quarterly income. In addition to the company's settlement, one of the principals agreed to pay a civil money penalty of \$180,000 plus disgorgement of ill-gotten gains obtained from selling the company stock after the false financial results were announced. The individual also agreed to be barred from serving as an officer or director at a public company for five years and from public company accounting for at least five years.
- The CFTC announced it had obtained an emergency Order freezing and preserving any remaining pool participant assets under the control of two individuals and two of the companies they control and prohibiting them from destroying any books and records. The Order arises out of a civil enforcement Complaint filed under seal by the CFTC on August 25, 2015, which charges the Defendants with fraudulently soliciting at least \$1.2 million from members of the public to trade commodity futures in a pool, misappropriating more than \$800,000 of pool participants' funds for their personal use, and misrepresenting the profitability of their trading. In addition to fraud, the Complaint charges the Defendants with operating a commodity pool without being registered with the CFTC, as required.
- The CFTC filed and simultaneously settled charges against a registered Futures Commission Merchant (FCM), for failing to diligently supervise its officers', employees', and agents' handling of accounts held at the FCM in the name of a fraudulent foreign currency exchange pool. The CFTC Order requires the FCM to pay a civil monetary penalty of \$700,000; disgorge the commissions and fees it earned from the fraudulent accounts (approximately \$140,000); and comply with certain undertakings including hiring a third-party compliance consultant to review and report on the supervisory issues raised in the Order.
- The CFTC filed a civil Complaint against an individual and his company, charging them with fraudulent solicitation and misappropriation in connection with the precious metals market. The CFTC alleges the Defendants, neither of whom was registered with the CFTC, obtained and misappropriated at nearly \$18 million in funds. In its continuing litigation, the CFTC seeks restitution to defrauded customers, disgorgement of ill-gotten gains, a civil monetary penalty, permanent registration and trading bans, and a permanent injunction against future violations of federal commodities laws, as charged.

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