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Safety & Soundness

Basel Committee Publishes Impact Analysis for Proposed Revisions to Market Risk

On November 18, 2015, the Basel Committee on Banking Supervision published the results of its interim impact analysis on its *Fundamental Review of the Trading Book*. The report assesses the impact of the proposed revisions to the market risk framework released in October 2013 and December 2014 using data as of December 31, 2014, from a sample of 44 banks. The Basel Committee highlights that, as proposed, these changes to the market risk framework would produce a 4.7 percent increase in the overall Basel III minimum capital requirement. The Basel Committee expects to finalize the standard “around year-end.” [\[Press Statement\]](#) [\[Interim Impact Report\]](#)

FSB Publishes Final Standards and Processes for Collection and Aggregation of Global Securities Financing Data

The Financial Stability Board (FSB) published final *Standards and Processes for Global Securities Financing Data Collection and Aggregation* on November 18, 2015. The finalized standards and processes define the data elements for securities financing transactions (SFTs), such as securities lending, repurchase agreements, and margin lending, that national and regional authorities will be asked to report to the FSB for financial stability purposes. Additionally, the standards and processes describe data architecture issues related to collection and transmission of data from the reporting entity to the national/regional authority and then from the national/regional to the global level, including six recommendations to promote the collection of consistent and comprehensive data among the reporting participants. The report indicates that enhanced data collection is needed to help authorities identify and manage emerging risks in the financial system. The FSB intends to initiate the official global data collection and aggregation by the end of 2018. [\[Press Release\]](#) [\[Standards\]](#)

Enterprise & Consumer Compliance

FTC Prohibits Certain Payment Methods under the Telemarketing Sales Rule

The Federal Trade Commission (FTC) has approved final amendments to its *Telemarketing Sales Rule* (TSR) that, among other things, include changes intended to help protect consumers from fraud by prohibiting discrete types of payment methods in telemarketing sales transactions. In particular, the TSR changes will prohibit telemarketers from: creating certain kinds of checks and “payment orders” that are “remotely created”; receiving payments through traditional “cash-to-cash” money transfers; and, accepting as payment “cash reload” mechanisms that are used to add funds to existing prepaid cards. The amendments will generally become effective 60 days following publication in the *Federal Register*. [\[Press Statement\]](#) [\[Final Rule\]](#)

FTC Signs MOU with FCC to Cooperate on Consumer Protection

The Federal Trade Commission announced on November 16, 2015, that it had signed a Memorandum of Understanding (MOU) with the Federal Communications Commission (FCC) to further the agencies' ongoing cooperation on consumer protection matters. The memorandum is designed to formalize the existing cooperation between the agencies, outlining methods by which the agencies will coordinate and share information. The FTC notes the agencies have followed a similar memorandum of understanding related to telemarketing enforcement issues since 2003. [\[Press Statement\]](#)

FDIC Reissues Guidance on Payday Lending

On November 16, 2015, the Federal Deposit Insurance Corporation (FDIC) released Financial Institution Letter (FIL) 52-2015 to announce that it is reissuing FIL 14-2005 and its attachment, *Revised Guidelines for Payday Lending*. The FDIC states that it is reissuing FIL 14-2005 to clarify for bankers and others that the guidance does not apply to banks offering products and services, such as deposit accounts and extensions of credit, to nonbank payday lenders. [\[FIL-52-2015\]](#) [\[Revised FIL-14-2005\]](#)

Legislative Actions

During the week of November 15, the House of Representatives passed the following bills:

- H.R. 1210, the *Portfolio Lending and Mortgage Access Act*, which would create a legal safe harbor for creditors that are depository institutions for failure to comply with "ability-to-repay" requirements created by the *Dodd-Frank Wall Street Reform and Consumer Protection Act* if the creditor has, since originating the loan or intends to upon consummation, hold the loan on its balance sheet until repayment and meets certain other requirements.
- H.R. 1737, the *Reforming CFPB Indirect Auto Financing Guidance Act*, which would declare without force or effect Consumer Financial Protection Bureau (CFPB) Bulletin 2013-02, *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act*, published March 21, 2013. The bill would also direct the CFPB, when proposing and issuing guidance primarily related to indirect auto financing, to:
 - Provide for a public notice and comment period before issuing the guidance in final form;
 - Make publicly available all information relied on by the CFPB;
 - Redact any information exempt from disclosure under the *Freedom of Information Act*;
 - Consult with the Federal Reserve Board, the Federal Trade Commission, and the Department of Justice; and
 - Study the costs and impacts of the guidance to consumers and women-owned, minority-owned, and small businesses.

Enforcement Actions

The Consumer Financial Protection Bureau (CFPB or Bureau) announced on November 18, 2015, that it had filed an administrative lawsuit seeking redress for harmed consumers, as well as a civil money penalty and injunctive relief against an online lender and its chief executive officer. The CFPB alleges they violated the *Truth in Lending Act* and the *Electronic Fund Transfer Act* as well as the *Consumer Financial Protection Act* prohibitions against unfair and deceptive acts and practices by "hiding the total cost of the loans," requiring repayment by pre-authorized electronic funds transfers, and continuing to debit borrowers' accounts after consumers canceled the authorization. .

Insurance

Legislative Actions

During the week of November 15, the House of Representatives passed H.R. 1478, the *Policyholder Protection Act of 2015*, which would prohibit federal banking regulators from moving the assets of healthy state-regulated insurance subsidiaries of larger financial firms to a failing bank subsidiary if the state insurance regulator determines the transfer would harm the status of the insurer.

Capital Markets and Investment Management

SEC Proposes Rules to Enhance Oversight of Alternate Trading Systems

The Securities and Exchange Commission (SEC) voted on November 18, 2015, to propose rules intended to enhance operational transparency and regulatory oversight of alternative trading systems (ATSs) that trade stocks listed on a national securities exchange (NMS stocks), including “dark pools.” The proposal would require an NMS stock ATS to file detailed disclosures on newly proposed Form ATS-N about its operations and the activities of its broker-dealer operator and its affiliates. These disclosures would be made publicly available on the SEC Web site and would include information regarding trading by the broker-dealer operator and its affiliates on the ATS, the types of orders and market data used on the ATS, and the ATS’ execution and priority procedures. The SEC is inviting comments from the public for 60 days following publication in the *Federal Register*. [\[Press Statement\]](#)

CFTC Extends No-Action Relief Related to Certain Inter-Affiliate Transactions

On November 17, 2015, the U.S. Commodity Futures Trading Commission’s (CFTC) Divisions of Clearing and Risk (DCR) and Market Oversight (DMO) each extended previously-issued no-action relief for certain inter-affiliate transactions. The DCR’s Staff Letter 15-63 extends the relief provided by CFTC Staff Letter 14-135. The DMO’s Staff Letter 15-62 extends the relief provided by CFTC Staff Letter 14-26 and 14-136. [\[Press Statement\]](#)

CFTC Discontinues Collection and Release of IID Report

The U.S. Commodity Futures Trading Commission (CFTC) announced that it will discontinue the collection and release of the monthly Index Investment Data Report (IID Report) for select commodity index position data. The final release of the IID Report will be issued on November 25, 2015, for data collected from the month of October 2015. [\[Press Statement\]](#)

Legislative Actions

During the week of November 15, the House of Representatives passed H.R. 1317, which would amend the *Commodity Exchange Act* and the *Securities Exchange Act of 1934* to revise the treatment of affiliate transactions that may be

exempt from clearing requirements to authorize such an exemption only if the affiliate enters into the swap to hedge or mitigate the commercial risk of the person that is not a financial entity (as under current law), provided that an appropriate credit support measure or other mechanism must be used if the hedge or mitigation of commercial risk is addressed by entering into a swap with either: (1) a swap dealer or major swap participant, or (2) a security-based swap with a security-based swap dealer or major security-based swap participant.

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 announced that an investment management firm agreed to pay \$16.5 million (including \$13.4 million in disgorgement, \$1.1 million in prejudgment interest, and a \$2 million penalty) to settle charges that it misled mutual fund investors and others with advertisements containing false historical performance data about a major exchange-traded fund (ETF) portfolio strategy.
- The CFTC filed a civil enforcement Complaint against a firm and two of its principals with soliciting and accepting at least \$50 million from nearly 1,000 clients worldwide, including approximately 700 clients in the United States, for off-exchange margined retail foreign currency trading, without being registered with the CFTC, as required. The CFTC Complaint seeks restitution, rescission, disgorgement, civil monetary penalties, trading and registration bans, and permanent injunctions against further violations of the registration provisions of the *Commodity Exchange Act* and CFTC Regulations.
- FINRA fined a firm \$2.6 million for failing to retain a large number of securities-related electronic records in the required format, and for failing to retain certain categories of outgoing emails. FINRA states the firm also did not have a reasonable supervisory system in place to achieve compliance with certain SEC and FINRA books and records rules, which contributed to its record-retention failures. The firm agreed to pay the fine without admitting or denying FINRA's findings.
- FINRA fined a firm \$1.4 million for violating Regulation SHO, FINRA's short interest reporting rule, and for related supervisory failures based on FINRA's findings the firm had been improperly included securities positions of a non-U.S. broker-dealer affiliate in numerous aggregation units when determining each unit's net position as well as failing to report its total "short" positions in all customer and proprietary firm accounts in equity securities on a gross basis.

Financial Crimes

Treasury Under Secretary Addresses Money Laundering Conference

Adam Szubin, Acting Under Secretary for Terrorism and Financial Intelligence at the U.S. Department of Treasury (Treasury), spoke before The Money Laundering Enforcement Conference hosted by the American Bankers Association and the American Bar Association on November 16, 2015. Under Secretary Szubin focused his remarks on "de-risking," which he defined to include instances in which a financial institution seeks to avoid perceived regulatory risk by indiscriminately terminating, restricting, or denying services to broad classes of clients. He stated that Treasury takes assertions of de-risking seriously and is working to identify and address the factors that lead U.S. banks to terminate relationships, believing that "most risks can and should be managed, not simply avoided altogether." He noted that Treasury has been coordinating closely with the World Bank, the Financial Stability Board, the Financial Action Task Force, and the G-20 to conduct surveys on potential de-risking and drops in correspondent banking relationships, adding that there is not yet clarity on the extent to which de-risking is happening and why. [\[Speech\]](#)

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