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The Washington Report

for the week ended April 8, 2016

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Safety & Soundness

Basel Committee Proposes Changes to the Basel III Leverage Ratio Framework

On April 6, 2016, the Basel Committee on Banking Supervision (Basel Committee) released a consultative document entitled *Revisions to the Basel III leverage ratio framework*. The document proposes a set of changes to the design and calibration of the non-risk-based leverage ratio introduced in January 2014. The changes are part of the regulatory reform program that the Basel Committee has committed to finalize by the end of 2016. The proposed revisions include:

- A modified version of the standardized approach for measuring counterparty credit risk exposures;
- Two options for the accounting treatment of regular-way purchases and sales of financial assets;
- Clarification of the treatment of provisions and prudential valuation adjustments for less liquid positions;
- Alignment of credit conversion factors for off-balance sheet items with those proposed for the standardized approach to credit risk under the risk-based framework; and
- An additional leverage ratio requirement applicable to global systemically important banks.

The Basel Committee states the design and calibration of the proposals will be finalized following an upcoming comprehensive quantitative impact study. Comments will be accepted through July 6, 2016. [Press Statement] [Consultative Document]

Federal Reserve Proposes Technical Amendments to GSIB Surcharge Rule

The Federal Reserve Board (Federal Reserve) proposed certain technical amendments to its rule requiring global systemically important bank holding companies (GSIBs) to hold additional risk-based capital. The final rule, issued in July 2015, established the criteria for identifying a firm as a GSIB and the methodology required to be used by the GSIB to determine its risk-based capital surcharge. The surcharge is intended to correspond with the systemic risk of the firm. The proposed technical amendments:

- Modify the GSIB surcharge rule to provide that bank holding companies covered under this rule are to continue calculating their method 1 and method 2 GSIB surcharge scores annually using data as of December 31 of the previous calendar year, even though the data will be reported on a quarterly basis beginning June 30, 2016.
- Clarify that GSIBs are required to compute their surcharge scores using systemic indicator amounts expressed in billions of dollars even though the data is reported in millions of dollars.
- Provide additional information on how GSIBs should calculate their short-term wholesale funding scores for the purpose of calculating their method 2 score under the GSIB surcharge rule.

The Federal Reserve indicates the proposed amendments do not materially change the underlying final rule. The agency will accept comments on the proposal through May 13, 2016. [Press Statement] [Notice of Proposed Rulemaking]

FDIC Rescinds De Novo Time Period Extension

On April 6, 2016, the Federal Deposit Insurance Corporation (FDIC) rescinded its Financial Institution Letter (FIL) 50-2009, *Enhanced Supervisory Procedures for Newly Insured FDIC-Supervised Depository Institutions*. The guidance had extended the de novo period for newly organized state non-member institutions from three to seven years. The FDIC explains that, since the guidance was issued, it has adopted enhanced supervisory guidance and procedures for all institutions that address the objectives of this guidance. [Press Statement]

In a concurrent action, the FDIC released FIL 24-2016, *Supplemental Guidance Related to the FDIC Statement of Policy on Applications for Deposit Insurance*, to assist applicants in developing proposals for deposit insurance. The supplemental guidance addresses business plan content with respect to initial submissions, weaknesses identified in submitted plans, and changes in business plans. [FIL-24-2016]

Enterprise & Consumer Compliance

OECD Releases Recommendations for Consumer Protection in E-Commerce

On April 4, 2016, the Federal Trade Commission (FTC) announced its support for new recommendations released in late March 2016 by the Organization for Economic Cooperation and Development's (OECD) on consumer protection in e-commerce. The new recommendations update an earlier set of recommendations released by the OECD in 1999, and include new developments in e-commerce, such as services that are exchanged for consumer data; mobile transactions and payments; and new platforms that enable consumer-to-consumer transactions. The paper sets out general principles focusing on: fair and transparent business and advertising practices, online disclosures, transaction confirmations, payments, dispute resolution and redress, privacy and security; and education. [Press Statement] [Recommendations]

CPMI and World Bank Release Final Report on Advancing Financial Inclusion

The Bank for International Settlements (BIS) released a final report on April 5, 2016, that was prepared jointly by the Committee on Payments and Market Infrastructures (CPMI) and the World Bank. The report, *Payment Aspects of Financial Inclusion,* is intended to identify measures to help countries overcome barriers to consumers' adoption and use of transaction accounts, which are fundamental to payment services. Seven guiding principles are discussed:

- Commitment from public and private sector organizations;
- A robust legal and regulatory framework;
- Safe, efficient, and widely reachable financial and ICT infrastructure;
- Transaction accounts and payment products that effectively meet a broad range of transaction needs;
- A broad network of access points and inter-operable access channels;
- Effective awareness and financial literacy efforts; and
- Leveraging large-volume and recurrent payment streams, including remittances. [Press Statement] [Report]

Insurance

NAIC Releases 2015 Annual Report

The National Association of Insurance Commissioners (NAIC) released its 2015 Annual Report, entitled *To Serve & Protect in the Digital Age,* on April 3, 2016. In press statements, NAIC President and Missouri Insurance Director, John M. Huff indicated that the theme of the report demonstrated the NAIC's commitment to strengthening state-based insurance regulation in the face of cyber-attacks and protecting consumer rights. The report provides a review of regulatory

activities undertaken during 2015 in the areas of government relations, international insurance supervision, financial regulation, market regulation, operations, data and technology, and consumer education.
[Press Statement] [2015 Annual Report]

Capital Markets and Investment Management

DOL Issues Final Rules Redefining a Fiduciary for Retirement Investment Advice

The U.S. Department of Labor (DOL) released final rules on April 6, 2016, that redefine a "fiduciary" for purposes of retirement investment advice. Under the rules, persons that provide retirement investment advice, as defined in the rules, to an employee benefit plan under the *Employee Retirement Income Security Act* (ERISA), or to the plan sponsors, fiduciaries, participants or beneficiaries, or to an Individual Retirement Account (IRA) under the Internal Revenue Code, for compensation will be deemed to be a fiduciary. As fiduciaries, these advisers are required to provide impartial advice that is in the best interest of their customer and are prohibited from accepting any payments creating conflicts of interest unless they qualify for an exemption intended to assure that the customer is adequately protected. The final rules will become effective June 7, 2016 and compliance will be required within one year of the publication date, or April 10, 2017, except for certain provisions related to the exemptions, including requirements for full disclosures, contracts, and policies and procedures, which will be phased-in through January 1, 2018. [DOL Materials]

FINRA and MSRB Issue Guidance on Direct Purchases and Bank Loans as Alternatives to Public Financing in Municipal Securities Markets

The Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 16-10 on April 4, 2016 to remind firms of their obligations in connection with the private placement of municipal securities directly with a single purchaser and the use of bank loans in the municipal securities market. The notice, which is issued in conjunction with the Municipal Securities Rulemaking Board (MSRB), highlights the concerns shared by FINRA and the MSRB that engaging in these activities may give rise to a number of compliance risks and may erode market transparency that serves the interests of investors and promotes fair and efficient markets. The guidance reminds firms engaging in these activities to conduct adequate due diligence to ascertain the nature of the transaction and financing instrument to ensure compliance with FINRA and MSRB rules, as well as with the federal securities laws and other applicable rules and regulations.
[Regulatory Notice 16-10]

CFTC and SEC Propose Guidance for Certain Swaps Considered Customary Commercial Arrangements

On April 4, 2016, the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) jointly issued the CFTC's proposed guidance on the appropriate treatment of certain electric power and natural gas contracts. The guidance proposes that certain capacity contracts in electric power markets and certain natural gas contracts should not be considered "swaps" under the *Commodity Exchange Act* because they are examples of customary commercial arrangements. Comments must be received by the CFTC no later than May 9, 2016. The CFTC proposes to issue further guidance on particular facts and specific circumstances under which these contracts should not be considered as "swaps". [Press Statement] [Proposed Guidance]

CFTC Announces $10 Million Whistleblower Award

The Commodity Futures Trading Commission (CFTC) has announced an award of more than $10 million to a whistleblower who provided information leading to a successful enforcement action. The award is the largest made to date under the CFTC's Whistleblower Program and the third award to a whistleblower who provided valuable information about violations of the *Commodity Exchange Act* (CEA). Created by the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010*, the CFTC's Whistleblower Program pays monetary awards to whistleblowers who voluntarily provide the CFTC with information about violations of the CEA leading to enforcement actions resulting in monetary sanctions exceeding $1,000,000. Whistleblowers are eligible to receive between 10 percent and 30 percent of the monetary sanctions collected. [Press Statement]

Enforcement Actions

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

- The SEC charged four individuals for defrauding investors, including seniors, by misrepresenting the performance of their investment advisory firm, and redirecting investors' funds to their personal use. The SEC is seeking disgorgement, penalties, and prejudgment interest.
- The CFTC announced that a federal court had issued a Consent Order imposing a permanent injunction against two foreign residents prohibiting them from engaging in spoofing, in violation of the *Commodity Exchange Act*. The practice of spoofing involves bidding or making an offer with the intent of canceling the bid or offer before execution. Based on the Order, the defendants regularly placed large aggregate orders for gold and silver contracts opposite smaller orders, and cancelled the larger orders after the smaller orders were executed. The Order requires the individuals to pay, in total, civil monetary penalties of nearly $2.7 million to settle CFTC charges as well as imposes permanent trading and registration bans.
- The CFTC issued an Order filing and simultaneously settling charges against an individual and a trading company (the Respondents) for noncompetitively entering into and reporting numerous non-bona fide exchange for physicals transactions in violation of the CEA. The Respondents were ordered to jointly pay a $280,000 civil monetary penalty, and were subject to four-year trading and registration bans.

Financial Crimes

FinCEN Proposes to Include Funding Portals in Definition of "Broker or Dealer in Securities"

The Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) announced on April 4, 2016, the release of proposed amendments to the definitions of ''broker or dealer in securities'' and ''broker-dealer'' under the regulations implementing the *Bank Secrecy Act* (BSA). In particular, FinCEN is proposing to amend those definitions explicitly to include funding portals that are involved in the offering or selling of crowdfunding securities pursuant to section 4(a)(6) of the *Securities Act of 1933*. If finalized as proposed, registered funding portals would be required to comply with all of the requirements of the BSA, including the reporting, recordkeeping, and record retention requirements that apply to entities currently defined as brokers or dealers in securities. Comments are requested by June 3, 2016. [Proposed Rule]

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This is a publication of KPMG's Financial Services Regulatory Risk Practice and KPMG's Americas FS Regulatory Center of Excellence

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