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Safety & Soundness

Federal Reserve and FDIC Provide Feedback on Resolution Plans of Largest Institutions; GAO Releases Report on Agencies' Resolution Plan Review Processes

On April 13, 2016, the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board (Federal Reserve) jointly announced they had provided firm-specific feedback on the resolution plans submitted by eight systemically important, domestic banking institutions in July 2015. Five of the eight firms were found by both agencies to have a resolution plan that was not credible and would not facilitate an orderly resolution under the U.S. Bankruptcy Code. These firms received joint notices detailing the deficiencies in their plans and outlining the actions that must be taken to remediate them. If the firms fail to complete this remediation by October 1, 2016, the agencies may impose more stringent prudential requirements, including capital, leverage, or liquidity requirements as well as restrictions on growth, activities, or operations of the firm, or its subsidiaries.

The agencies identified weaknesses in the resolution plans of two of the remaining three firms though they did not make joint determinations. The FDIC found one of those plans was not credible and would not facilitate an orderly resolution under the U.S. Bankruptcy Code and identified deficiencies for the firm to address. The Federal Reserve identified a deficiency in the other of the two plans and determined that it was not credible and would not facilitate an orderly resolution under the U.S. Bankruptcy Code. Because the agencies did not make joint determinations, the deficiencies are considered to be "shortcomings" that must be addressed in each of the firm's next resolution plan filings, which are due in July 2017. The resolution plan of the eighth firm was found by both of the agencies to be credible though they did identify certain shortcomings that must be addressed in that firm's 2017 resolution plan filing.

Along with their joint announcement, the agencies released a document, *Resolution Plan Assessment Framework and Firm Determinations (2016)*, which explains the resolution planning requirement and offers information on the agencies' processes for reviewing the plans. The agencies also released new guidance for the July 2017 submission. The Federal Reserve released the feedback letters issued to each firm. [\[Joint Press Statement\]](#) [\[Resolution Plan Assessment Framework and Firm Determinations \(2016\)\]](#) [\[2017 Guidance\]](#)

Separately, the General Accountability Office (GAO) issued a report on Resolution Plans (GAO-16-341) on April 12, 2016. The report was requested by Jeb Hensarling, Chairman of the House Committee on Financial Services, and examines the FDIC and Federal Reserve processes for reviewing and assessing firms' resolution plans, progress made, and stakeholders' views on the usefulness of the plans. The report highlights GAO's key findings, which suggest that the agencies could improve the transparency and timeliness of their review processes. [\[GAO Report\]](#)

OFR Releases Brief on Systemic Importance and Global Risk

The U.S. Department of Treasury's Office of Financial Research (OFR) released Brief 16-03 on April 13, 2016, to introduce an online interactive chart intended to help users track and compare systemically important data for the 30 institutions identified as global systemically important banks (G-SIBs). The Brief also offers analysis of the Basel Committee on Banking Supervision's most recently released data related to the systemic importance of G-SIBs. Systemic importance scores are calculated using 12 indicators across five categories: size, interconnectedness, substitutability, complexity and cross jurisdictional activity. The findings highlight that:

- U.S. banks remain the most systemically important and the largest U.S. banks are highly interconnected, and lack substitutes for the financial services they offer.

- The systemic importance scores of Chinese banks increased the most over the last year, in line with other indicators of rising systemic risk in that country.
- The systemic importance scores for three of the European banks declined by more than 10 percent. [\[OFR Brief\]](#)

Basel Committee Proposes Standard Definitions for Measures of Asset Quality

The Basel Committee on Banking Supervision (Basel Committee) issued a consultative document on April 14, 2016, which would establish standardized definitions for two measures of asset quality – “nonperforming exposures” and “forbearance.” The Basel Committee expects the standardized definitions would bring about consistency in supervisory reporting and disclosures by banks. Comments are requested through July 15, 2016.

[\[Press Statement\]](#) [\[Consultative Document\]](#)

Congressional Actions

- The House of Representatives passed H.R. 2947, the *Financial Institutions Bankruptcy Act of 2016*, on April 13, 2016. The bill would create a new bankruptcy chapter for bank holding companies and certain other entities. It passed the House by voice vote and has been referred to the Senate. [\[H.R. 2947\]](#)
- The House Committee on Financial Services passed H.R. 4894 by a vote of 34-22 on April 13, 2016. The bill would repeal Title II of the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010*, which provides the Federal Deposit Insurance Corporation with an Orderly Liquidation Authority as an alternative to bankruptcy. [\[H.R. 4894\]](#)
- The House of Representatives passed H.R. 3340, the *Financial Stability Oversight Council Reform Act*, on April 14, 2016. The bill would make the budgets of the Financial Stability Oversight Council and the Office of Financial Research subject to the annual appropriations process, and establish requirements for reports and a public notice and comment period. It passed the House by a vote of 239 to 179 and has been referred to the Senate for consideration. [\[H.R. 3340\]](#)

Enterprise & Consumer Compliance

Enforcement Actions

- The Office of the Comptroller of the Currency (OCC) announced that it assessed a \$35 million civil money penalty against a national bank to address the agency’s findings that the bank’s billing practices associated with its credit-monitoring product violated the unfair and deceptive acts or practices provisions in Section 5 of the *Federal Trade Commission Act* (FTC Act). According to the OCC, customers did not receive full benefit of the product marketed and sold by the bank, its affiliate, and its vendors. In addition to the financial penalty, the bank must identify and make restitution to harmed customers, including repayment of the full amount paid for this product, plus any associated over-limit fees, finance charges, and interest. Additionally, the bank must ensure compliance with the FTC Act, improve governance of third-party vendors associated with add-on consumer products, develop a risk management program for add-on consumer products marketed or sold by the bank or its vendors, and develop a consumer compliance internal audit program for add-on consumer products.

Congressional Actions

- The House Committee on Financial Services passed H.R. 1486, the *Taking Account of Bureaucrats' Spending Act of 2016*, by a vote of 33-20 on April 13, 2016. The bill would subject the Consumer Financial Protection Bureau to the annual appropriations process and eliminate provisions of the *Consumer Financial Protection Act* that fund the CFPB through the Federal Reserve System. [\[H.R. 1486\]](#)

Insurance

IAIS Seeks Comment on Issues Paper for Cyber Risk to the Insurance Sector

On April 14, 2016, the International Association of Insurance Supervisors (IAIS) announced that it was seeking public comment on a draft paper entitled *Issues Paper on Cyber Risk to the Insurance Sector*. The paper is intended to raise the awareness of insurers and supervisors about the challenges presented by cyber risk, including current and contemplated supervisory approaches for addressing the risk. Building on a 2015 IAIS Member survey, the paper provides background on current practices related to cyber risk, identifies examples, and explores related regulatory and supervisory issues and challenges. Comments on the draft are requested by May 13, 2016. A public discussion of the comments and proposed resolutions is planned for late June or early July. [\[Paper\]](#)

Capital Markets and Investment Management

SEC Issues Concept Release Seeking Input on Regulation S-K Disclosures

On April 13, 2016, the Securities and Exchange Commission (SEC) voted to issue a Concept Release that considers ways to enhance and modernize certain business and financial disclosure requirements under the SEC's Regulation S-K. In particular, the release is seeking input on:

- Whether the disclosure requirements elicit the information investors need for investment and voting decisions;
- What would be the most effective presentation of the disclosure information;
- How to improve the readability and navigability of disclosures; and
- Specific examples of formats for presenting information as well as on the use of certain tools, such as hyperlinks and references.

Comments will be accepted for a period of 90 days following publication in the *Federal Register*. [\[Press Statement\]](#)
[\[Concept Release\]](#)

SEC Adopts Final Business Conduct Standards for Swaps Entities

On April 13, 2016, the Securities and Exchange Commission (SEC) adopted final rules implementing business conduct standards and chief compliance officer requirements for security-based swap dealers (SBSD) and major security-based swap participants (MSBSP). The SEC summarizes the final rules require SBSDs and MSBSPs to comply with a range of

provisions designed to enhance transparency, facilitate informed consumer decision-making, and heighten standards of business conduct. These include communicating with potential counterparties in a fair manner, disclosing material information about the security-based swap, including material risks, and adhering to other professional standards of conduct. In addition, the rules require these entities to establish a supervisory and compliance infrastructure, and designate a chief compliance officer who is required to fulfill the duties included in the rules, and prepare an annual compliance report.

Certain additional requirements for SBSBs are highlighted, including requirements to:

- Determine that any recommendations they make regarding security-based swaps are suitable for their counterparties; and
- When acting as an advisor to a special entity, including municipalities, pension plans, endowments, and other similar entities, make a reasonable determination that any recommendations regarding a security-based swap or trading strategy are in the best interests of the special entity.

The final rules also address the cross-border application of these requirements and the potential availability of substituted compliance. The rules will become effective 60 days after publication in the *Federal Register*, though, with some exceptions, compliance will generally be based on the compliance date of the registration rules for SBSBs and MSBSPs. The Commodity Futures Trading Commission (CFTC) has previously adopted final business conduct standards for swap dealers and major swap participants. The SEC indicates that it has consulted with the CFTC and the Department of Labor on this rulemaking. [\[Press Statement\]](#) [\[Final Rules\]](#)

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 announced that it had charged a town, its local development corporation, and four town officials with fraud for allegedly hiding the town's deteriorating financial situation from municipal bond investors in 16 municipal bond offerings. The officials were charged with violating sections of the *Securities Act of 1933*, the *Securities Exchange Act of 1934* and Rule 10b-5. The SEC is seeking an order prohibiting the town officials from participating in future municipal bond offerings. The SEC is also seeking financial penalties and a court order appointing an independent consultant to recommend improvements in the town's financial reporting and municipal securities disclosure policies, and to monitor the mandated implementation of those recommendations over a five year period. In a parallel action, the U.S. Attorney's Office announced criminal charges against two of the individuals charged.
- The SEC announced insider trading charges against a research analyst for trading through a relative's brokerage account based on non-public information accessed at work. The analyst allegedly gained more than \$1.5 million in one month. The SEC's complaint charges the analyst with violating Section 10(b) of the *Securities Exchange Act of 1934* and Rule 10(b)-5 though its investigation is ongoing. In a parallel action, the U.S. Attorney's Office announced criminal charges against the analyst.
- The CFTC settled charges against an individual and his company (Respondents) for fraudulently soliciting customers to trade in commodity futures and for repeatedly making false statements and material misrepresentations to the National Futures Association (NFA) regarding their trading practices. The CFTC Order requires the Respondents to jointly pay restitution of more than \$1.1 million to defrauded customers and more than \$450,000 in civil monetary penalties and disgorgement of ill-gotten gains. It further imposes permanent registration and trading bans on the Respondents and requires them to cease and desist from further violations of the *Commodity Exchange Act*.
- The CFTC filed and simultaneously settled charges against an individual for aiding and abetting two companies' fraudulent solicitation of participants in a foreign currency exchange pool between July and August of 2011, by contributing to a mass solicitation email to prospective pool participants. The individual was required to pay a civil monetary penalty of \$140,000 and to disgorge the \$1,138 in compensation received from one of the companies. In addition, the CFTC Order permanently banned the individual from registering with the CFTC or engaging in any commodity-related activity. The CFTC previously filed a federal court action in 2013 against the companies for their fraudulent scheme and subsequently entered into a Consent Order for a permanent injunction against them in 2015.

The Order also required them to pay more than \$3.3 million in restitution and \$4.15 million in civil monetary penalties. In a related criminal action, the owner of the two companies was sentenced to more than eight years in prison for his involvement in the mail fraud.

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