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Safety & Soundness

Agencies Approve Release of Net Stable Funding Ratio Proposal

On April 26, 2016, the board of the Federal Deposit Insurance Corporation (FDIC) approved the release of a notice of proposed rulemaking, prepared jointly with the Office of the Comptroller of the Currency (OCC) and the Federal Reserve Board (Federal Reserve), that would implement a stable funding requirement, the net stable funding ratio (NSFR), for large and internationally active banking organizations. The proposed NSFR requirement would apply beginning January 1, 2018, to bank holding companies, certain savings and loan holding companies, and depository institutions that, in each case, have $250 billion or more in total consolidated assets or $10 billion or more in total on-balance sheet foreign exposure, and to their consolidated subsidiaries that are depository institutions with $10 billion or more in total consolidated assets. In addition, the Federal Reserve is proposing a modified NSFR requirement for bank holding companies and certain savings and loan holding companies that, in each case, have $50 billion or more, but less than $250 billion, in total consolidated assets and less than $10 billion in total on-balance sheet foreign exposure. Neither the proposed NSFR requirement nor the proposed modified NSFR requirement would apply to banking organizations with consolidated assets of less than $50 billion and total on-balance sheet foreign exposure of less than $10 billion. Holding companies subject to the proposed NSFR requirement or modified NSFR requirement would be required to publicly disclose the company's NSFR and the components of its NSFR each calendar quarter.

Thomas Curry, Comptroller of the Currency also approved the release of the joint proposed rule on behalf of the OCC. The Federal Reserve is expected to vote on the proposal soon. Comments are requested by the agencies no later than August 5, 2016. [OCC Statement] [FDIC Proposed Rule]

Agencies Jointly Propose Rules Covering Incentive-Based Compensation Arrangements

Six federal agencies are moving toward publication of a joint proposed rulemaking that would implement the provisions of Section 956 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act), which requires the agencies to issue regulations:

- Prohibiting incentive-based payment arrangements that encourage inappropriate risks by certain financial institutions by providing excessive compensation; and
- Requiring those financial institutions to disclose information concerning incentive-based compensation arrangements to the appropriate federal regulator.

Four of the six agencies, the National Credit Union Administration, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Federal Housing Finance Agency (FHFA), have now approved release of the proposed rule, which is a re-proposal of an earlier joint proposal issued by the agencies in 2011. The Federal Reserve Board and the Securities and Exchange Commission are expected to vote on the proposal soon.

As now proposed, the rule would apply to covered institutions (including depository institutions, broker-dealers, investment advisers, credit unions, and other financial institutions under the supervision of the issuing agencies) with average total consolidated assets of $1 billion or more that offer incentive-based compensation. It would establish general qualitative requirements applicable to all covered institutions, as well as specific requirements for institutions based on the size of their total assets. Larger institutions would be subject to more prescriptive requirements related to their incentive compensation practices, including incentive award limits, deferral requirements, downward adjustments and forfeitures, and clawbacks. Comments will be accepted through July 2, 2016. [Proposed Rule]

FDIC Amends the Risk-Based Assessments Methodology for Established Small Banks

The Federal Deposit Insurance Corporation (FDIC) approved a final rule on April 26. 2016, to amend the way small banks are assessed for deposit insurance. The rule applies to banks that have less than $10 billion in assets and have been insured by the FDIC for at least five years. The FDIC indicates the updated risk-based assessments methodology will better reflect the risks for each institution. The rule adds two assessment measures: the loan mix index and an asset growth measure. The loan mix index accounts for risks arising from certain loan concentrations while the asset growth measure captures the risks caused by banks that grow rapidly. The final rule becomes effective July 1, 2016. If the reserve ratio of the Deposit Insurance Fund (DIF) has not reached 1.15 percent by that date, the final rule will apply from the quarter after the reserve ratio reaches 1.15 percent. The FDIC also revised its online assessment calculator to allow institutions to estimate their assessment rates following implementation of the final rule. [Press Statement] [Final Rule]

FFIEC Issues Examiner Guidance on Risks in Mobile Financial Services

On April 29, 2016, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation each announced that the Federal Financial Institutions Examination Council (FFIEC) had released a new appendix, "Appendix E - Mobile Financial Services," to the "Retail Payment Systems" booklet, which forms a part of the FFIEC's Information Technology (IT) Examination Handbook. The guidance focuses on risks associated with activities and devices used in mobile financial services. Mobile financial services pose high risks with respect to device security, authentication, data security, mobile malware, data transmission security, compliance, and third-party management. The appendix emphasizes the need to have an enterprise-wide risk management approach for effectively managing and mitigating existing and evolving risks. It also discusses the technologies used in the mobile delivery channel, consequent risks that may arise, and appropriate controls to be implemented by institutions and third-party providers. The appendix also contains work program objectives to assist examiners determine the state of risk and controls at these institutions. [OCC Bulletin 2016-14] [FIL-31-2016]

Enterprise & Consumer Compliance

CFPB Issues Monthly Complaint Report Highlighting Mortgages

The Consumer Financial Protection Bureau (CFPB or Bureau) released its monthly consumer complaint snapshot on April 26, 2016. The current issue reflects all complaints received by the Bureau through March 31, 2016, which total nearly 860,000. The most complained about categories of consumer financial products and services remains debt collection, mortgages, and credit reporting. Together, these categories represented nearly 70 percent of all complaints received in March 2016. The issue also highlighted mortgage-related complaints, noting that common consumer complaints related to mortgages included trouble associated with loan modification and foreclosure processes, confusion related to loan transfers, and communicating with servicers. [Monthly Complaint Report]

Enforcement Actions

The Consumer Financial Protection Bureau (CFPB or Bureau) publicly released consent orders that require a debt collection law firm, two of its principal partners, and a debt buying firm to address unfair and deceptive practices related to debt collection, which the CFPB found to include fling lawsuits based on unsubstantiated evidence. The consent orders bar the companies and individuals from illegal practices that deceive or intimidate consumers, including acts such as filing

lawsuits without determining if the debts in question are accurate and valid. The law firm and the named partners are required to pay $1 million, and the debt-buyer firm is required to pay $1.5 million to the Bureau's Civil Penalty Fund.

FINRA Coordinates Research Project on Small Dollar Loan Product

On April 27, 2016, the Financial Industry Regulatory Authority (FINRA) announced that its Investor Education Foundation, the Filene Research Institute, and six credit unions have launched a two-year research project to assess the long-term impact and cost / benefit analysis of an Employer Sponsored Small Dollar Loan product designed to help employees avoid the high cost of payday loans, to establish or repair credit, and to encourage saving.

FINRA explains that the Employer Sponsored Small Dollar Loans are made available to employees of participating companies based on the length of employment (determined by the credit union) but not on credit scores. The application process is simple, and the money is often available on the same day it is requested. Loans are repaid through payroll deduction, and successful repayment is reported to credit bureaus. After the loan is repaid, a deduction in the amount of the loan repayment continues on an opt-out basis and is deposited into the employee's savings account.
[Press Statement]

Capital Markets and Investment Management

SEC Approves National Market System Plan Proposal

The Securities and Exchange Commission (SEC) voted on April 27, 2016, to publish a proposed national market system (NMS) plan to create a single, comprehensive database, or consolidated audit trail (CAT), that would enable regulators to efficiently track all trading activity in the U.S. equity and options market. The proposed NMS plan would also detail the methods that self-regulatory organizations (SROs) and broker-dealers would use to record and report information, resulting in a range of data elements that would give an insight into the complete lifecycle of all orders and transactions in the U.S. equity and options markets. The SEC states the proposed plan would increase the effectiveness of market research and monitoring, event re-construction, and the ability to identify and investigate market misconduct. The SEC has prepared the preliminary economic analysis of the proposal, which details the economic effects, including costs of the creation, implementation and maintenance of the CAT as proposed by the SROs.

The proposed plan includes an implementation schedule that would require SROs to begin reporting data to the central repository within one year of final approval of the plan, large broker-dealers to begin reporting within two years of final approval, and small broker-dealers to begin reporting data within three years of final approval. Comments on this proposal which will be open for 60 days following publication in the Federal Register. [Press Statement] [Proposed Plan]

FINRA Makes First Monthly Cross-Market Equity Supervision Report Cards Available

On April 28, 2016, the Financial Industry Regulatory Authority (FINRA) made available to member firms its first monthly cross-market equities supervision report cards, which are intended to help firms identify and halt spoofing and layering activity. Spoofing refers to entering orders to entice other participants to join on the same side of the market at a price at which they would not ordinarily trade, and then trading against the other market participants' orders. Layering refers to entering limit orders with the intended effect of moving the market to obtain a beneficial execution on the other side of the market. These reports are sent to firms where FINRA identifies potential spoofing or layering by the firm or entities to which the firm is providing market access. The reports provide a summary of the identified market activity, detailed

information about the exceptions, and trends in such trading over the preceding six months. FINRA expects firms to use this data to enhance their surveillance and cut off potential market manipulation. FINRA considers the reports to be a preventive compliance measure that will operate in parallel with its own surveillance process. FINRA states that it will continue its current practice of investigating suspected manipulation. [Press Statement]

FINRA Issues Notice on TRACE Reporting Exemption for Certain ATS Transactions

The Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 16-15 on April 27, 2016, to acknowledge that FINRA Rule 6732 (Exemption from Trade Reporting Obligation for Certain Transactions on an Alternative Trading System) becomes effective July 18, 2016. Rule 6732 provides FINRA the authority to exempt, upon application, a member alternative trading system (ATS) from the TRACE trade reporting obligations of Rule 6730 (Transaction Reporting) for transactions occurring on an ATS that meet certain specified conditions, which generally include that:

- The trade is between FINRA members;
- The trade does not pass through any ATS account, and the ATS does not exchange TRACE-eligible securities or funds on behalf of the subscribers, or take either side of the trade for clearing or settlement purposes
- The ATS agrees to provide to FINRA on a monthly basis the data relating to each exempted trade occurring on the ATS's system pursuant to Rule 6732
- The ATS remits to FINRA a transaction reporting fee based on the fee schedule set forth in Rule 7730(Trade Reporting Fee) for each exempted sell transaction occurring on the ATS; and
- The ATS enters into a written agreement with each member that is a "Party to a Transaction" with respect to any trade for which the ATS is exempted under the rule specifying that such trade must be reported by such party pursuant to Rule 6730), identifying that the trade occurred on the ATS using the ATS's separate MPID obtained in compliance with Rule 6720 (Alternative Trading Systems).

FINRA will consider applications for exemption on a case-by-case basis. [Regulatory Notice 16-15]

Legislative Actions

The U.S. House of Representatives approved House Joint Resolution 88 on April 28, 2016, disapproving the Department of Labor's final rule redefining a "fiduciary" for purposes of providing retirement investment advice. A related bill is moving through the U.S. Senate. [H.J.Res. 88]

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