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The Washington Report

for the week ended May 13, 2016

In This Issue

Safety & Soundness

OFR Launches Viewpoint Series and Paper on Best Practices for Regulatory Data Collection

The Office of Financial Research (OFR) announced the launch of its new "Viewpoint Series" on May 10, 2016, with the release of its first paper, *Developing Best Practices for Regulatory Data Collection*. The OFR indicates the set of best practices presented in the paper is based on current knowledge and the literature that regulators and market participants have published about their efforts to collect structured data en masse using appropriate data standards. The purpose of the report is to initiate a discussion about identifying best practices in financial regulatory data collection, with a view to aligning the interests of government officials and the industry. The paper stresses that the collection of comprehensive, high quality, interoperable data by regulators is important for analyzing financial stability, monitoring the market, formulating policy, and managing risk. In addition, the paper:

- Describes best practices with respect to financial regulatory data collection;
- Identifies the different approaches that are likely to deliver the best results in collecting regulatory data;
- Offers guidelines for collecting comprehensive, high quality, and interoperable data;
- Identifies pitfalls that financial regulators may encounter in the process; and
- Describes the importance of designing a clear, well-specified data collection template.

The paper underscores the fact that following best practices will help financial regulators improve the quality of data collected, and make the process more efficient and less costly not only for themselves but also for the financial companies that report information to various authorities. [Press Statement] [Viewpoint Report]

Enterprise & Consumer Compliance

Treasury Releases Paper on Opportunities and Challenges in Online Marketplace Lending

On May 10, 2016, the U.S. Department of the Treasury (Treasury) issued a white paper on its review of the online marketplace lending industry. The white paper, entitled, *Opportunities and Challenges in Online Marketplace Lending,* continues the work initiated by the Treasury's July 2015 Request for Information (RFI) seeking *Public Input on Expanding Access to Credit through Online Marketplace Lending*. The paper gives an overview of the market landscape, reviews stakeholder opinions, and provides policy recommendations. It also highlights the benefits and risks associated with online marketplace lending, and the best practices applicable to both established and emerging market participants. Treasury notes some common themes highlighted by the comments received in response to the RFI were as follows:

- Use of data and modeling techniques for underwriting is an innovation and a risk;
- There is opportunity to expand access to credit;
- New credit models and operations remain untested;
- Small business borrowers will likely require enhanced safeguards;
- Greater transparency can benefit borrowers and investors;
- The secondary market for loans is undeveloped; and
- Regulatory clarity can benefit the market.

To encourage safe growth and access to credit through online marketplace lending, the white paper recommends that the federal government and private sector participants:

- Support more robust small business borrower protections and effective oversight;
- Ensure sound borrower experience and back-end operations;
- Promote a transparent marketplace for borrowers and investors;
- Expand access to credit through partnerships that ensure safe and affordable credit;
- Support the expansion of safe and affordable credit through access to government-held data; and
- Facilitate interagency coordination through the creation of a standing working group for online marketplace lending.

The paper also identifies key trends that will require ongoing monitoring, including the evolution of credit scoring, the impact of changing interest rates, potential liquidity risk, increasing mortgage and auto loans originated by online marketplace lenders, potential cybersecurity threats, and compliance with anti-money laundering requirements.
[Press Statement] [White Paper]

OFR Releases Working Paper on the Consequences of Bank Mortgage Lending Standards

The Office of Financial Research (OFR) released a working paper on May 11, 2016, entitled "*The Real Consequences of Bank Mortgage Lending Standards*." The authors summarize that to better understand what happens when bank loan officers change mortgage lending standards, they matched responses from the Federal Reserve Board's Senior Loan Officer Opinion Survey (SLOOS) with mortgage application information from the *Home Mortgage Disclosure Act* (HMDA) over the period from 1990 to 2013. The authors highlight the following findings:

- Reported changes in credit standards are a leading indicator of the financial industry's vulnerability to shocks to real estate prices.
- Bank loan underwriting standards are key determinants governing credit availability. Reports indicate that tightened standards lead to an increase of about 1 percentage point in denial rates for mortgages, which the authors states implies a reduction in aggregate mortgage credit of about $690 million per quarter and vice-versa.
- Approved applications for loans with high interest rates (a proxy for subprime and other nontraditional mortgages) fall by 14 to 20 percent when banks report tightening in lending standards and applications for all kinds of loans rise strongly when banks report stronger demand.
- Banks that have tightened standards show lower delinquency rates two years after such tightening. The reports says that the tightened standards are associated with better loan performance.
- House prices fall when banks tighten lending standards, resulting from a decline in approved mortgages.
[Working Paper]

OCC Releases New Examiner Guidance on Private Student Lending

On May 9, 2016, the Office of the Comptroller of the Currency (OCC) issued Bulletin 2016-15 to release its new "Student Lending" booklet, which forms a part of the Comptroller's Handbook. This booklet is intended to assist OCC examiners in their examination and supervision of national banks and federal savings associations engaged in private student lending, which includes consumer loans offered to fund undergraduate, graduate, and other forms of postsecondary education.
The booklet:

- Provides guidance to examiners on assessing the quantity of risk associated with granting private loans to students;
- Provides information on unique aspects of student loans and industry practices prevalent in the context of student loans;
- Highlights the differences between federal student loans and private student loans; and
- Sets regulatory expectations for safe and sound operations.

The OCC states that the Bulletin also makes public the Chief National Bank Examiner (CNBE) Policy Guidance 2010-2 (REV), *Policy Interpretation: OCC Bulletin 2000-20—Application to Private Student Lending,* which was issued to OCC employees on August 4, 2010. The guidance affirms that the principles of the Uniform Retail Credit Classification and Account Management Policy would be applicable to private student lending. [OCC Bulletin 2016-15]

FTC Issues FCRA Guidance to Employment Background Screening Companies that Qualify as Consumer Reporting Agencies

On May 10, 2016, the Federal Trade Commission (FTC) issued guidance regarding compliance with the *Fair Credit Reporting Act* (FCRA) that was directed toward companies involved in the business of providing background screening information for employment purposes. The guidance seeks to help these companies understand when their work defines them as a Consumer Reporting Agency under the provisions of the FCRA as well as the obligations the FCRA imposes on Consumer Reporting Agencies, including investigating consumer disputes, correcting inaccurate information, and obtaining certifications from clients regarding the use of background information report. [Press Statement] [Guidance]

Enforcement Actions

The Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB or Bureau) announced the following enforcement action in the past week:

- The FTC charged a debt collection agency with violation of the *Fair Credit Reporting Act* (FCRA), alleging that the company failed to follow the requirements of the FCRA's Furnisher Rule by not having adequate policies and procedures in place to handle consumer disputes regarding the information provided by it to credit reporting agencies to prepare consumers' credit reports. The FTC alleged the company also did not have a policy to notify consumers of the outcomes of investigations on disputed information. When consumers dispute potentially incorrect information in their credit reports, the FCRA requires companies to not only investigate those disputes but also to let consumers know whether the information has been corrected thus enabling consumers to take any necessary additional steps to resolve the issue. To settle the FTC's charges, the company agreed to pay $72,000 in civil penalties and to put policies and procedures in place to ensure compliance with FCRA requirements and the Furnisher Rule.
- The CFPB took action against a company that offers check cashing and payday loans, and its owner, for allegedly violating the unfair, deceptive, or abusive acts of practices provisions of the *Consumer Financial Protection Act*. The CFPB alleges the company did not reveal to consumers the charges associated with cashing a check and used deceptive tactics to pressure borrowers to take multiple loans and to stop consumers from backing out of transactions. The company also made deceptive statements about the benefits of its payday loans and failed to provide refunds when consumers made overpayments on their loans. The CFPB's complaint seeks to end the company's unlawful practices, obtain redress for consumers, and impose penalties.

Capital Markets and Investment Management

IOSCO Publishes Report on the Impact of Storage and Delivery Infrastructure on Commodity Derivatives Market Pricing

On May 9, 2016, the International Organization of Securities Commissions (IOSCO) published a report entitled *The Impact of Storage and Delivery Infrastructure on Commodity Derivatives Market Pricing*. The report sets out the conclusions of a review conducted by the IOSCO to study the impact of storage infrastructure on the price of physically delivered commodity derivatives contracts that are traded on regulated exchanges. The price formation process for commodity derivatives is a complex process affected by many factors, including factors such as rail cars, grain silos, oil tankers and metal warehouses that form integral components of the delivery system that ensures contracts are honored and commodities are delivered. Physical delivery and storage infrastructure therefore has a major impact on the economics of the futures markets, such as the cost of carry of the derivatives contract, convergence between the derivative and the physical market prices, and the premiums for each of the contract's delivery points. Key findings highlighted by the report are:

- The IOSCO's *Principles for the Regulation and Supervision of Commodity Derivatives Markets*, published in September 2011, provides an adequate framework for implementing effective oversight, governance, and operational controls of storage infrastructure. Additional principles or revision to existing principles was not deemed to be necessary.
- The report identified certain practices / circumstances surrounding storage infrastructure that have the potential to affect the pricing of derivatives contracts. These practices could increase uncertainty among market participants, and hinder financial regulators and exchanges from identifying and resolving emerging problems.
- Greater awareness of these practices and their potential impact on pricing and market operations would help the parties involved in storage infrastructure to anticipate, identify and address potential issues at an early stage and avoid the need for regulatory involvement.
- Further work is recommended to develop guidance in the form of Good or Sound Practices with respect to the operation and oversight of storage infrastructures. [Press Statement] [Report]

Enforcement Actions

The Commodity Futures Trading Commission (CFTC), the Financial Industry Regulatory Authority (FINRA), and the Securities and Exchange Commission (SEC) announced the following enforcement action in the past week:

- The CFTC issued charges against a broker-dealer and clearing company and its controller for violations of CFTC Regulations. The firm was found to have violated CFTC Regulations that require a futures commission merchant (FCM) to: 1) immediately report to the CFTC any deficiency in its customer segregated account or the targeted residual interest in its customer segregated account, and 2) submit daily reports to the CFTC for positions held by certain large traders whose accounts are carried by the FCM. The firm's controller and head accountant was also held liable for abetting the firm's failure to immediately report the customer segregated account deficiency. The CFTC ordered the firm and its controller to jointly pay a civil monetary penalty of $150,000 and prohibited them from further violations of the CFTC Regulations.
- FINRA censured a private investment banking firm and imposed a fine of $900,000, for inadequately supervising firm-wide internal 'flash' emails sent by its research analysts to share information on the companies and industries covered by the firm. The firm-wide flash email program was designed to share publicly available news and insights on covered companies with its sales and trading personnel for discussion with the firm's customers interested in the companies. However, inadequate supervision lead to a risk that the emails could potentially include nonpublic information that could be misused by sales and trading personnel. FINRA also found instances of firm personnel forwarding flash emails marked "internal use only" to customers, and content from draft research reports being cut and pasted into a flash email. The firm was ordered to cease its distribution of flash emails and to conduct a comprehensive review of its policies, procedures, and training in the research area. In settling this matter, the firm neither admitted nor denied the charges, but consented to entry of FINRA's findings.
- The SEC announced fraud charges against two individuals, a stock promoter and a lawyer, for allegedly creating and selling sham companies. The individuals filed registration statements to form various startup companies and mislead potential investors into believing that these company would be operating and profitable. The SEC charged the individuals with violating the antifraud, reporting, and securities registration provisions of federal securities laws and is seeking disgorgement of ill-gotten gains plus interest and penalties, permanent injunctions, and penny stock bars as well as an officer-and-director bar against one of the individuals.
- The SEC has announced a whistleblower award of more than $3.5 million to a company employee whose tip bolstered an ongoing investigation and helped strengthen SEC's case. With this award, the SEC has announced in a press release that it has awarded more than $62 million to 28 whistleblowers since the program's inception in 2011.

Contact Us

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

Amy Matsuo, Principal, National Leader, Financial Services Regulatory Risk Practice amatsuo@kpmg.com

Ken Albertazzi, Partner and National Lead, Financial Services Safety & Soundness kalbertazzi@kpmg.com

Kari Greathouse, Principal and National Lead, Enterprise and Consumer Compliance cgreathouse@kpmg.com

Tracy Whille, Principal and National Lead, Capital Markets and Investment Management twhille@kpmg.com

Barbara C. Matthews, Managing Director, Americas FS Regulatory Center of Excellence bcmatthews@kpmg.com

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regulationfs@kpmg.com

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Additional Contacts

Asset Management, Trust, and Fiduciary
Bill Canellis wcanellis@kpmg.com

Bank Regulatory Reporting
Brett Wright bawright@kpmg.com

Capital Markets Regulation
Stefan Cooper stefancooper@kpmg.com

Capital/Basel II and III
Paul Cardon pcardon@kpmg.com

Commodities and Futures Regulation
Dan McIsaac dmcisaac@kpmg.com

Consumer & Enterprise Compliance
Stacey Guardino sguardino@kpmg.com

Cross-Border Regulation & Foreign Banking Organizations
Paul Cardon pcardon@kpmg.com

Financial Crimes
Terry Pesce tpesce@kpmg.com

Insurance Regulation
Matthew McCorry memccorry@kpmg.com

Investment Management
Larry Godin lgodin@kpmg.com

Safety & Soundness, Corporate Licensing & Governance, and ERM Regulation
Greg Matthews gmatthews1@kpmg.com

FS Regulatory Center of Excellence
Karen Staines kstaines@kpmg.com