The Washington Report

for the week ended May 27, 2016

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OFR Publishes Brief Analyzing Public Information in G-SIB Resolution Plans

The Office of Financial Research (OFR) published a Brief on May 25., 2016, that analyzes the public portions of the resolution plans, or living wills, submitted by the eight U.S. global systemically important banks (G-SIBS) in 2014 and 2015. The resolution plans are required by the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010* (Dodd-Frank Act) and are intended to describe how these firms could be wound down through bankruptcy proceedings following their potential failure. The authors conclude that publicly available information does not provide enough detail to determine if a failing bank could be unwound without government aid. Based on that finding, the authors identify three areas in the public portions of resolution plans they suggest could be improved.

- G-SIBs have done little to streamline their core businesses since 2013 and the complexity of their organizational structures makes the firms more difficult to resolve. The public portion of the resolution plans provide only a "rough idea" of how these firms would manage through the complexity in the event of a failure.
- Information around corporate structures made available in the public portions of the resolution plans can be inconsistent with similar information available through other regulatory sources, and the publicly available information through all sources is insufficient to offer enough detail to understand the thousands of entities constituting the organizational structure of the G-SIB and the challenges to unraveling them.
- More information is needed to understand cross-border operations and potential barriers to resolution of operations in host countries.

The authors note that despite the identified limitations, the information appears to confirm the concerns and criticisms expressed by the Federal Reserve Board and the Federal Deposit Insurance Corporation when they rejected many of the G-SIBs' 2015 resolution plans earlier this spring. The authors call for greater standardization and consistency in reporting when the G-SIBs submit their next living will on July 1, 2017. [Press Statement]

Financial Stability Board Publishes Thematic Peer Review on the Implementation of FSB's Policy Framework for Strengthening Oversight and Regulation of Shadow Banking Entities

The Financial Stability Board (FSB) on May 25, 2016, published a thematic peer review on the progress made by the FSB member jurisdictions in implementing its *Policy Framework for Strengthening Oversight and Regulation of Shadow Banking Entities*. The FSB states that the Policy Framework sets forth principles that authorities should adhere to in their oversight of non-bank financial entities that pose financial stability risks arising from shadow banking. These principles involve: defining and updating the regulatory perimeter; collecting information and assessing shadow banking risks (i.e. maturity/liquidity transformation, imperfect credit risk transfer and/or leverage); enhancing public disclosure to help market participants understand these risks; adopting appropriate policy tools to mitigate identified risks; and participating in an information-sharing exercise within the FSB on assessments and tools.

The thematic peer review describes the steps undertaken by the FSB in 2015 to enhance its assessment of non-bank financial entities and activities that may give rise to financial stability risks. The peer review concludes that implementation of the Policy Framework remains at a relatively nascent stage. More work is needed to ensure that jurisdictions can assess comprehensively and respond to potential shadow banking risks posed by non-bank financial entities, and to support FSB risk assessments and policy discussion. The review makes recommendations to FSB jurisdictions to implement fully the Policy Framework. The FSB also indicates that it will conduct follow-up work to: enhance consistency across jurisdictions in their classification of non-bank financial entities into economic functions; develop approaches to help jurisdictions better monitor and assess risks from those entities' interconnectedness and cross-border activities; and facilitate the sharing of information among member authorities on policy tools and public disclosures. [Press Release] [Policy Framework]

OFR Publishes Working Paper on Collateral Uses and Flows

The Office of Financial Research (OFR) released Working Paper 16-06 on May 26. 2016, entitled, *A Map of Collateral Uses and Flows*. The paper maps collateral flows to show how collateral moves among bilateral counterparties, triparty banks, and central counterparties (CCPs), illustrating which parts of this process occur through central clearing and which do not occur through central clearing. The paper also discusses the recent increase in collateral demand, effects of post-crisis regulation (including, the reduced capacity for banks to act as collateral intermediaries) and collateral-related stress scenarios. Finally, it provides examples of risks and vulnerabilities in collateral flows. [OFR Working Paper 16-06]

Enterprise & Consumer Compliance

CFPB Issues Monthly Consumer Complaint Snapshot Focusing on Credit Reporting

On May 24, 2016, the Consumer Financial Protection Bureau (CFPB or Bureau) released its monthly consumer complaint snapshot, which reflects complaints received by the Bureau through May 1, 2016, and highlights complaints related to credit reporting. The Bureau indicates that it has received more than 882,000 consumer complaints since it began accepting complaints in 2011. It received nearly 24,000 complaints in the month of April 2016 alone. The three most commonly complained about consumer financial products and services are related to: debt collection, credit reporting, and mortgages.

With regard to credit reporting, key findings include the following:

- Approximately 16 percent of all consumer complaints are related to credit reporting.
- More than three-quarters of those complaints pertain to incorrect information appearing on credit reports.
- Consumers also consistently report difficulties disputing inaccuracies on their credit report.
- Approximately 95 percent of all credit reporting complaints submitted between December 2015 and February 2016, involved the three largest nationwide credit reporting companies.
- Consumers have also submitted complaints about specialty reporting companies in areas such as background and employment screening, checking account screening, rental screening, and insurance screening. [Press Statement] [CFPB Monthly Complaint Report]

FDIC Seeks Input from Financial Institutions on Use of Mobile Financial Services to Enhance Economic Inclusion

The Federal Deposit Insurance Corporation's (FDIC) Advisory Committee on Economic Inclusion (ComE-IN) met on May 25, 2016, to discuss the FDIC's paper, *Opportunities for Mobile Financial Services to Engage Underserved Consumers.* The paper reports the findings of qualitative research recently conducted by the FDIC to identify ways of using mobile financial services (MFS) to engage better with underserved consumers in the banking system. The research was part of the agency's National Survey of Unbanked and Underbanked Households, and was based in part on input from 18 focus groups of underserved consumers in diverse markets. The FDIC Advisory Committee recommended banks consider the following strategies when seeking to meet the needs of underserved consumers:

- Increase consumer control over finances by improving access to timely account information;
- Expedite access to money;

- Make banking more affordable through better account management;
- Address real and perceived security shortfalls;
- Increase awareness of mobile tools; and
- Encourage long-term financial management.

Earlier this month, on May 3, 2016, the FDIC separately issued Financial Institution Letter (FIL) 32-2016, seeking input from financial institutions, consumer groups, and other stakeholders on its plans to explore and demonstrate how MFS can be successfully leveraged to promote and support underserved consumers' banking relationships. In particular, the FDIC seeks comments and feedback on: 1) financial institutions' current implementation of the strategies identified through the qualitative research; 2) the best way to shape a demonstration project; and 3) indications of interest from financial institutions that may wish to participate in a demonstration. Comments will be accepted by the FDIC through June 15, 2016. [FIL-32-2016] [Press Statement] [FDIC Report] [Request for Comments]

Legislative Update

On May 23, 2016, the House of Representatives passed H.R. 2121, the *SAFE Transitional Licensing Act of 2015*. Loan originators are required by the *Secure and Fair Enforcement for Mortgage Licensing Act of 2008* (the SAFE Act) to register in a nationwide mortgage licensing system. Originators that work for a nonbank lender are also required to obtain a state license. H.R. 2121 would allow a registered loan originator who moves to another state or switches from a depository institution to a nonbank lender to continue to originate loans for as long as 120 days while applying for a new license. [Press Statement]

Enforcement Actions

The Office of the Comptroller of the Currency (OCC), the Consumer Financial Protection Bureau (CFPB or Bureau), and the Federal Trade Commission (FTC) announced the following enforcement actions in the past week:

- The OCC announced that it had terminated a 2011 mortgage servicing-related consent order against a national bank after determining the bank now complied with the order. The OCC also imposed a $70 million civil money penalty against the bank to address the OCC's findings that the bank did not correct deficiencies identified in the 2011 consent order in a timely fashion, which, among other things, resulted in the bank engaging in certain unsafe or unsound banking practices, including filing payment change notices in bankruptcy courts that did not comply with bankruptcy rules and making escrow calculation errors that in some cases led to incorrect loan modification denials.
- The CFPB took action against a former loan officer at a large banking organizations for his role in an illegal mortgage fee-shifting scheme in violation of the *Real Estate Settlement Procedures Act* (RESPA). The CFPB found that the individual referred many loan closings to a single escrow company, and worked with that escrow company to manipulate the prices paid by his customers for escrow services. Without admitting or denying any of the CFPB's findings, the individual agreed to the issuance of a consent order requiring the individual to pay a penalty of $85,000 and to accept a ban from working in the mortgage industry for one year.
- The FTC and the State of Florida jointly announced that they have taken actions against two debt relief operators in response to their student loan debt relief schemes. The FTC found the operators of these debt schemes lured borrowers with false promises to eliminate or reduce their debt, and charged illegal up-front fees for their purported services. The defendants were charged with violating the *Federal Trade Commission Act*, the *Telemarketing Sales Rule*, the *Credit Repair Organizations Act*, and the *Florida Deceptive and Unfair Trade Practices Act*.

Insurance

U.S. Department of the Treasury and the European Union Continue Negotiations Toward a Covered Agreement

The U.S. Department of the Treasury (Treasury) issued a press statement on May 27, 2016, to announce that representatives from the United States (U.S.) and the European Union (EU) had met on May 24 and May 25 to discuss a future bilateral agreement relating to prudential insurance and reinsurance measures. The announcement indicated that both sides had agreed to continue in good faith to pursue an agreement on matters relating to group supervision, exchange of confidential information between supervisory authorities, and reinsurance supervision, including collateral, with the goal of improving the regulatory and supervisory treatment of insurers and reinsurers operating on both sides of the Atlantic.

Title V of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* authorized the Secretary of the Treasury, through the Federal Insurance Office (FIO), and the Office of the U.S. Trade Representative (USTR) to negotiate jointly a "covered agreement." A covered agreement is an agreement between the United States and one or more foreign governments, authorities, or regulatory entities, regarding prudential measures with respect to insurance or reinsurance. In November 2015, Treasury and the USTR announced their intention to begin negotiating a covered agreement with the EU and the first meeting occurred in February 2016.

Capital Markets and Investment Management

BIS Publishes First Phase of a Global Code of Conduct for Foreign Exchange Markets

In May 2015, the Bank for International Settlements (BIS) commissioned a working group of the BIS Markets Committee to facilitate the establishment of a single global code of conduct for the entirety of the wholesale foreign exchange market (Code) and to consider mechanisms to promote greater adherence to the Code. On May 26. 2016, the working group - the Foreign Exchange Working Group (FXWG) - released the first phase of the Code as well as principles for adherence to the new standards. This first phase covers ethics, information sharing, execution, and confirmation and settlement processes. A second and final phase is expected to be released in May 2017, and will cover governance, execution in electronic and high-speed trading, and risk management and compliance.

The Code is principles-based and is intended to apply to all foreign exchange market participants, including sell-side and buy-side entities, non-bank liquidity providers, operators of Trading Venues, and other entities providing brokerage, execution and settlement services. It will not impose legal or regulatory requirements on the foreign exchange market participants. However, the FXWG indicates that it intends to work with market participants over the next year to develop market-based mechanisms that demonstrably embed the Code within firms' cultures and practices. The complete global Code and adherence mechanisms are expected to be released in May 2017. [Press Statement] [FX Global Code] [Update on adherence mechanisms]

CFTC Issues Final Cross-Border Margin Rules

On May 24, 2016, the Commodity Futures Trading Commission (CFTC) issued a final rule that implements a cross-border application of the CFTC's margin requirements for uncleared swaps. This final rule is closely aligned with the cross-border margin requirements previously adopted by the Prudential Regulators in November 2015, and requires Covered Swap Entities to comply with the CFTC's margin requirements for all un-cleared swaps in cross-border transactions, with a limited exclusion for certain non-U.S. entities. In certain circumstances, the final rule allows Covered Swap Entities to comply with comparable margin requirements in a foreign jurisdiction as an alternative means of complying with the CFTC's margin rule for uncleared swaps. However, such "substituted compliance" will be limited by the extent to which the CFTC determines the foreign jurisdiction's requirements are comparable to the CFTC's. A process for requesting "comparability determinations" is provided in the rule. Finally, the rule also includes special provisions to accommodate swap activities in jurisdictions that do not have a legal framework to support custodial arrangements or that do not have netting arrangements that comply with the CFTC's margin rule.

The rule will become effective 60 days after publication in the *Federal Register*; Compliance with the CFTC's margin rule will be required beginning September 1, 2016. The CFTC earlier this year (in January 2016) published final rules to establish initial and variation margin requirements for uncleared swaps of swap dealers (SDs) and major swap participants (MSPs) that do not have a Prudential Regulator (Covered Swap Entities). The Prudential Regulators include, the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Farm Credit Administration, and Federal Housing Finance Agency). [Press Statement] [Final Rule] [Fact Sheet]

CFTC Issues Supplemental Proposal to Its Proposed Rule on Position Limits

On May 26, 2016, the Commodity Futures Trading Commission (CFTC) issued a supplemental notice of proposed rulemaking that would amend its December 2013 proposed rule on position limits. The supplemental proposed rule would delay implementation of the rules governing position limits on swaps until such time as sufficient information exists to implement the position limits. It would modify procedures for persons seeking exemptions from limits on speculative positions for non-enumerated bona fide hedging transactions. It would also provide a new process for exchanges to recognize certain positions in commodity derivative contracts as non-enumerated bona fide hedges or enumerated anticipatory bona fide hedges, as well as exempt certain spread positions from federal position limits. In connection with these changes, the CFTC would also propose to amend certain definitions, including the definition of a "bona fide hedging position" for physical commodities. The supplemental notice of proposed rulemaking will be open for public comment for 30 days following publication in the *Federal Register*. [Press Statement]

FINRA Guidance Highlights Customer Risks Related to Stop Orders

On May 26, 2016, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 16-19 to encourage firms to review their practices regarding stop loss orders, giving consideration to associated risks to investors. The guidance encourage firms to:

- Train registered representatives on the risks associated with stop orders and the availability of alternatives that could be used to meet customer objectives;
- Educate investors on the risks and benefits of stop orders;
- Provide clear and comprehensive disclosures of risks to customers where they are able to place a stop order directly online;
- Review their customer base to determine whether safeguards should be put in place around the availability and use of stop orders;
- Consider whether systemic safeguards around the use of specific order types is appropriate; and
- Be cognizant of special considerations around the use of stop orders during volatile market conditions. [Regulatory Notice 16-19]

New Information Required for FINRA OATS Reports

The Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 16-20 to alert FINRA members that report information to the Order Audit Trail System (OATS). Effective August 1, 2016, these firms will be required to include in their reports the identity of the U.S. registered broker-dealers that are not FINRA members and broker-dealers that are not registered in the U.S. but have received an SRO-assigned identifier. The identities may be reported using either the broker-dealer's Central Registration Depository (CRD) number or an SRO-assigned identifier. [Press Statement] [Regulatory Notice 16-20]

Enforcement Actions

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

- The CFTC filed an Order instituting proceedings and settlings charges against a company and its former owners and operators (respondents) to address the CFPB's findings they illegally offered off-exchange, leveraged transactions in precious metals to retail customers and failed to register with the CFTC as a Futures Commission Merchant (FCM). The respondents were ordered to pay restitution and civil monetary penalties totaling to more than $530,000. They were ordered to cease and desist from further violations of the *Commodity Exchange Act*, and were also permanently barred from trading on or pursuant to the rules of any CFTC-registered entities.
- The CFTC issued an order to file and settle charges against a large bank to address the CFTC's findings that the bank attempted to manipulate, and made false reports concerning, the U.S. Dollar International Swaps and Derivatives Association Fix (USD ISDAFIX), which is a global benchmark for interest rate products. The bank is required to pay a $250 million civil monetary penalty and to immediately cease and desist from further violations of the *Commodity Exchange Ac*t. It is also required to take specified steps to strengthen its internal controls and procedures, including measures to detect and deter trading intended to manipulate swap rates and to ensure the integrity of interest-rate swap benchmarks. This is the CFTC's second enforcement action for the attempted manipulation and false reporting of ISDAFIX benchmark rates.
- In a separate action, the CFTC ordered the bank and two of its affiliates to jointly and severally pay a $175 million penalty for the attempted manipulation of Yen LIBOR and Euroyen TIBOR, and the false reporting of Euroyen TIBOR and U.S. Dollar LIBOR. The bank and its affiliates were ordered to jointly pay a civil monetary penalty and to immediately cease and desist from further violations of the *Commodity Exchange Act*, and adhere to specific undertakings to ensure the integrity of its LIBOR, Euroyen TIBOR, and other benchmark interest rate submissions.

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