KPMG
cutting through complexity

The Washington Report

for the week ended June 17, 2016

In This Issue

Safety & Soundness

Basel Committee Conducts Cross-Jurisdictional Assessment of G-SIB and D-SIB Frameworks

On June 16, 2016, the Basel Committee on Banking Supervision (Basel Committee) published reports assessing the implementation of its frameworks for global and domestic systemically important banks (G-SIBs and D-SIBs) in each of the five jurisdictions that are currently home to a G-SIB: China, the European Union, Japan, Switzerland, and the United States. The Basel Committee notes this is the first assessment to be conducted on a cross-jurisdictional basis, with all five jurisdictions being simultaneously assessed against the Basel frameworks. With respect to the G-SIB framework, the Basel Committee reported that the outcome of the assessment was positive. The implementation of the Basel G-SIB framework was found to be "compliant" in all five of the jurisdictions, which is the highest of the four possible assessment grades. With respect to D-SIBs, the Basel Committee reported that it found the frameworks implemented in the separate jurisdictions to be broadly aligned with the Basel Committee's D-SIB principles, though with some variation in the additional requirements and policy measures applied to D-SIBs.

The Basel Committee also indicated that additional clarity is required regarding how the United States, China, Japan and Switzerland set regulatory reporting and disclosure requirements. The Basel Committee standards are denominated in euro. Conversion of the thresholds into local currency therefore presents challenges in achieving cross-border consistency in setting these thresholds when exchange rates shift. [Press Statement]

Agencies Release Host State Loan-to-Deposit Ratios for Interstate Branching

The Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency jointly released the host state loan-to-deposit ratios that they will use to determine compliance with Section 109 of the *Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994*. These ratios replace the prior year's ratios, which were released on June 29, 2015.

In general, Section 109 prohibits a bank from establishing or acquiring a branch or branches outside of its home state primarily for the purpose of deposit production. It also prohibits branches of banks controlled by out-of-state bank holding companies from operating primarily for the purpose of deposit production. A process to test compliance with these statutory requirements is provided in the law. The first step involves a loan-to-deposit ratio test that compares a bank's statewide loan-to-deposit ratio to the host state loan-to-deposit ratio for banks in a particular state. The second step is conducted if a bank's statewide loan-to-deposit ratio is less than one-half of the published ratio for that state or if data are not available at the bank to conduct the first step. The second step requires the appropriate agency to determine whether the bank is reasonably helping to meet the credit needs of the communities served by the bank's interstate branches. A bank that fails both steps is deemed to be in violation of Section 109 and is subject to sanctions by the appropriate agency. [Loan-to-Deposit Ratios]

Enterprise & Consumer Compliance

CFPB Announces Truth-In-Lending Act Annual Threshold Adjustments Effective 2017

The Consumer Financial Protection Bureau (CFPB or Bureau) announced the annual adjustments to the dollar amounts of various thresholds under the *Truth in Lending Act* (TILA) regulations that will apply to certain consumer credit transactions beginning January 1, 2017. The adjustments are based on the change reflected in the Consumer Price Index in effect on June 1, 2016. The thresholds adjusted include: the minimum interest charge and safe harbor penalty fees under the *Credit Card Accountability Responsibility and Disclosure Act* (CARD Act); the total loan amount, points and fees dollar trigger for high-cost mortgages under the *Home Ownership and Equity Protection Act* (HOEPA); and, and the maximum points and fees for qualified mortgages under the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd Frank). The CFPB has also revised one of the 2016 safe harbor penalty fee amounts due to a decline in the 2015 Consumer Price Index that was not fully accounted for. This revision is effective upon publication in the *Federal Register*. [TILA Adjustments]

Agencies Announce List of Distressed or Underserved Nonmetropolitan Middle-Income Geographies for Purposes of Community Reinvestment Act Consideration

On June 17, 2016, the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation announced the availability of the 2016 list of distressed or underserved nonmetropolitan middle-income geographies. Depository institutions that support revitalization or stabilization activities undertaken in these geographic areas will receive *Community Reinvestment Act* (CRA) consideration as community development.

Distressed nonmetropolitan middle-income geographies and underserved nonmetropolitan middle-income geographies are designated by the agencies in accordance with their CRA regulations and reflect local economic conditions, including unemployment, poverty, and population changes. Additional information regarding designations is available on the Web site of the Federal Financial Institutions Examination Council (FFIEC).

For geographies that were listed as distressed or underserved nonmetropolitan middle-income geographies in 2015 but are no longer designated as distressed or underserved in the current release, the agencies will apply a one-year lag period. Accordingly, revitalization or stabilization activities in these geographies are eligible to receive CRA consideration as community development for 12 months following publication of the current list. [CRA Geographies List]

FTC Provides Comment on FCC Proposal to Allow Robocalls for the Collection of Debt Owed To or Guaranteed By the Federal Government

The Federal Trade Commission (FTC) publicly released its comments provided to the Federal Communications Commission (FCC) in response to an FCC proposal to allow robocalls, without a consumer's prior express consent, when the calls are made solely to collect debt owed to or guaranteed by the federal government. The staff comment urges caution with any expansion of permissible robocalling, outlining the consumer protection concerns raised by robocalls and indicating that robocalls are often vehicles for abusive, deceptive, and unfair business practices. FTC staff recommend the FCC create standards for collecting government debt that are consistent with several related laws enforced by the FTC, including the *Fair Debt Collection Practices Act* and the *Telemarketing Sales Rule*. In addition, the staff comment proposes four key limitations regarding such robocalls: (1) only to those regarding debts in "default," (2) only to persons who actually owe the debts, (3) only to collect government debt, and (4) only for collection purposes. [Press Statement]

Enforcement Actions

The Federal Trade Commission (FTC) has announced the following enforcement actions this week:

- The FTC charged a number of attorneys and their law firms to address the FTC's findings they violated the prohibitions against unfair or deceptive acts or practices in Section 5 of the *Federal Trade Commission Act*, as well as the *Mortgage Assistance Relief Services Rule* (MARS Rule) and Regulation O (Mortgage Assistance Relief Services as published by the CFPB) in connection with an alleged mortgage relief scam. The FTC alleges the defendants made false and misleading claims and/or representations regarding their abilities to obtain certain results for consumers, charged consumers advance fees, and failed to make certain required consumer disclosures. At the FTC's request, a federal court has temporarily halted the scheme, and the agency seeks to permanently stop the alleged illegal practices and obtain refunds for consumers.
- The FTC obtained a court order banning a debt collector from operating in the debt collection business based on an FTC enforcement action previously filed in May 2015. The court had found that the defendants deceived consumers via text messages, emails and phone calls that falsely threatened consumers with arrest or lawsuits if they did not make debt collection payments. The court previously had halted the scheme and frozen the defendants' assets pending litigation.
- The FTC, acting together with the Office of the Florida Attorney General, filed a complaint against twenty separate defendants to address the agencies' allegations the defendants' engaged in a telemarketing scheme to defraud financially distressed consumers by selling them debt relief services, including credit-card interest rate reduction services and credit card debt elimination services. The agencies allege the defendants provided consumers with false guarantees that they would obtain substantially and permanently lower credit card interest rates or access a government fund to pay off the consumer's credit card debt. The agencies further allege the defendants operated as a common enterprise while engaging in the scheme, contacting consumers through "robocalls" that delivered prerecorded misleading messages. Consumers were typically charged in advance for the services promised. The defendants are charged with violations of the *Federal Trade Commission Act,* the *Telemarketing Sales Rule*, and the *Florida Deceptive and unfair Trade Practices Act*. See the Alternative Finance section of this Washington Report for additional information.

Insurance

IAIS Introduces Updated Assessment Methodology for G-SIIs and Paper on Systemic Risk from Insurance Product Features

On June 16, 2016, the International Association of Insurance Supervisors (IAIS) introduced an updated Assessment Methodology (2016 Methodology) for globally systemically important insurers (G-SIIs). The 2016 Methodology outlines a five-phase approach to the G-SII assessment process that includes fact-based qualitative and quantitative elements. Certain indicators used in the initial assessment methodology have been modified to address issues related to indicator responsiveness, connection with systemic risk, and data quality, including reliability (across both insurers and jurisdictions). In contrast to the initial 2013 methodology, the 2016 Methodology uses absolute reference values for derivatives trading (credit default swaps or similar derivatives instrument protection sold), financial guarantees and reinsurance indicators. The 2016 Methodology also covers all types of insurance and reinsurance, and other financial activities of global insurers.

In addition, the IAIS released a related paper, entitled *Systemic Risk from Insurance Product Features*. The paper provides a framework for assessing why certain product features and related activities may raise the potential systemic risks for insurers upon failure. It also describes the rationale for the IAIS' discontinuation of the Non-traditional, Non insurance

(NTNI) product label and its replacement with a more granular and nuanced assessment of product features. [Press Statement] The papers are available through this link: [IAIS Papers]

Capital Markets and Investment Management

CFTC Approves Data Recordkeeping and Reporting Requirements for Cleared Swaps

The Commodity Futures Trading Commission (CFTC) approved a final rule (Final Rule) on June 14, 2016, amending existing Part 45 swaps reporting regulations. The goal is to provide additional clarity to swap counterparties and registered entities regarding their reporting obligations for cleared swap transactions. In particular, the Final Rule removes uncertainty as to which counterparty to a swap is responsible for the initiating and maintaining reporting obligations regarding continuation data for the various components of a cleared swap transaction, including further clarifying whose obligation it is to report the extinguishment of a swap upon its acceptance by a derivatives clearing organization for clearing. The CFTC anticipates that the Final Rule will have a number of other benefits, including a reduced likelihood of double counting notional exposures and an improved ability to trace the history of a cleared swap transaction from execution between the original counterparties to clearing novation. The Final Rule will become effective 180 days after publication in the *Federal Register*. [Press Statement]

CFTC Seeks Comment on Information Collection for Swaps

The Commodity Futures Trading Commission (CFTC) is seeking to renew its approval to collect information from a designated contract market (DCM) or a swap execution facility (SEF) pertaining to the process to make a swap available to trade. Currently, a DCM or SEF that submits a determination that a swap is available to trade must address at least one of several factors to demonstrate that the swap is suitable for trading pursuant to the trade execution requirement. The CFTC is inviting comment on a number of questions, including ways to enhance the quality, usefulness, and clarity of the information to be collected, and ways to minimize the burden associated with the collection of information. Comments are requested by August 15, 2016. [Notice]

FINRA Proposes One-Year Extension of Interim Pilot Program on Margin Requirements for Credit Default Swaps

The Financial Industry Regulatory Authority (FINRA) has filed a proposed rule change with the Securities and Exchange Commission (SEC) to extend the implementation of FINRA Rule 4240 (Margin Requirements for Credit Default Swaps) through July 18, 2017. FINRA Rule 4240 implements an Interim Pilot Program with respect to margin requirements for certain transactions in credit default swaps (CDS) that are security-based swaps. FINRA believes extension of the program is appropriate because of the ongoing development of the CDS business and the pending implementation of final margin rules to be issued by the SEC and the Commodity Futures Trading Commission pursuant to Title VII of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. [Press Statement] [Proposed Rule Change]

CFTC Proposes to Expand Scope of Interest Rate Swaps for Clearing

The Commodity Futures Trading Commission (CFTC) has proposed to amend its regulation 50.4(a) to require certain additional interest rate swaps to be cleared by market participants through a registered derivatives clearing organization (DCO) or a DCO that has been exempted from registration under the *Commodity Exchange Act* (Exempt DCO). As proposed, the amendments would add, among other things, a requirement to clear certain interest rate swaps denominated in nine additional currencies. This expanded scope would make the CFTC's clearing requirement consistent with those proposed or finalized in 2015 or 2016 by the CFTC's counterparts in Australia, Canada, the European Union, Hong Kong, Mexico, and Singapore. Comments are requested by July 18, 2016. [Proposed Rule]

SEC Issues Interpretation and Staff Guidance Related to Automated Securities Prices

The Securities and Exchange Commission (SEC) released a final updated interpretation regarding automated quotations under Regulation NMS on June 17, 2016. The interpretation applies to the Order Protection Rule under Regulation NMS, which protects the best priced automated quotations of certain trading centers by generally obligating other trading centers to honor those protected quotations and not execute trades at inferior prices. Under Regulation NMS, an automated quotation is one that, among other things, can be executed immediately and automatically against an incoming immediate-or-cancel order.

The updated interpretation determines that a small delay will not prevent investors from accessing stock prices in a fair and efficient manner consistent with the goals of the Order Protection Rule. The SEC interprets the term "immediate" under Rule 600(b)(3) of Regulation NMS as precluding any coding of automated systems or other type of intentional action that would delay access to a security price beyond a *de minimis* amount of time. Staff guidance issued concurrently with the updated interpretation states that delays of less than one millisecond are at a *de minimis* level.

The SEC also notes that staff will conduct a study regarding the effects of any intentional access delays on market quality, including asset pricing, within two years. {Press Statement] [Final Interpretation] [Staff Guidance]

Enforcement Actions

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

- The SEC reached settlements with two state-based municipal advisory firms and their executives to address the SEC's charges they used deceptive practices when soliciting business from municipal clients. The SEC alleges one of the advisory firms shared confidential information with the other advisory firm, and also failed to register as a municipal advisor. Without admitting or denying the findings in the SEC's orders instituting settled administrative proceedings, one of the municipal advisory firms agreed to a censure and $30,000 penalty while its president agreed to a ban from the municipal advisory business and a $20,000 penalty. The other firm agreed to censure and a $100,000 penalty and two of its principals agreed to pay a total penalty of $50,000. The SEC notes that this is the first enforcement action under the municipal advisor antifraud provisions of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*.
- The SEC charged two hedge fund managers and a former government official with insider trading for deceptively obtaining confidential information from a government agency and using that information to reap unlawful profits of nearly $32 million. The SEC's complaints charge the defendants with violations of Section 17(a) of the S*ecurities Act of 1933* and Section 10(b) of the *Securities Exchange Act of 1934.* The SEC is seeking disgorgement of ill-gotten plus interest and penalties.

Alternative Finance

Regulatory Attention Directed Toward Robocalls

The Federal Trade Commission (FTC) recently issued three announcements regarding "robocalls,"which are telephone calls delivered with prerecorded messages.

- The FTC announced a recent enforcement action against a "web of related defendants" to address the FTC's allegations they were engaging in a telemarketing scheme that targeted financially distressed consumers. The consumers, including many that were on the "do not call" registry maintained by the FTC, were contacted through robocalls and provided misleading and fraudulent information regarding the defendants' debt relief services. The FTC notes that this case is the 39th action taken since January 2015 as part of a coordinated multinational enforcement effort to halt robocall operations. The effort includes the participation of Canada, the United Kingdom, the U.S. Department of Justice, the Federal Communications Commission (FCC) and the attorneys general of ten states. (This item is also included in the Enterprise & Consumer Compliance section above.)
- On June 13, 2016, the FTC signed the London Action Plan memorandum of understanding (MOU) joining other signatories from the Netherland, Australia, Canada, the United States, the United Kingdom, Korea, New Zealand, and South Africa in an agreement to share information and intelligence regarding unsolicited messages and calls. The purpose of the London Action Plan is to promote cooperation to target spam and unsolicited calls as well as related concerns, such as fraud and deception and information "phishing." [Press Statement]
- The FTC provided comment to the Federal Communications Commission (FCC) in response to the FCC's proposal to allow robocalls to be used when collecting debt owed to or guaranteed by the federal government without a consumer's prior express consent. The FTC cautioned the FTC regarding the consumer protection concerns raised by robocalls, including the potential for robocalls to be used for abusive, deceptive, and unfair business practices, and recommended the FCC create standards for collecting government debt that consistent with consumer protection laws, including the *Fair Debt Collection Practices Act* and the *Telemarketing Sales Rule*. The FTC's comment letter is available through its press release. [Press Statement] (This item is also included in the Enterprise & Consumer Compliance section above.)

Agencies Publish Annual Updates for Certain Consumer-Focused Regulations

The Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Consumer Financial Protection Bureau published the following annual updates that impact consumer lending:

- The Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation announced the availability of the 2016 list of distressed or underserved nonmetropolitan middle-income geographies on June 17, 2016. Depository institutions that support revitalization or stabilization activities undertaken in these geographic areas will receive *Community Reinvestment Act* (CRA) consideration as community development. Distressed nonmetropolitan middle-income geographies and underserved nonmetropolitan middle-income geographies are designated by the agencies in accordance with their CRA regulations and reflect local economic conditions, including criteria based on unemployment, poverty, and population changes. Additional information regarding designations, as well as information regarding the geocoding system, is available on the Web site of the Federal Financial Institutions Examination Council (FFIEC). [FFIEC CRA] [CRA Geographies List] (This item is also included in the Enterprise & Consumer Compliance section above.)
- The Consumer Financial Protection Bureau (CFPB or Bureau) announced the annual adjustments to the dollar amounts of various thresholds under the *Truth in Lending Act* (TILA) regulations that will apply to certain consumer credit transactions beginning January 1, 2017. The adjustments are based on the change reflected in the Consumer Price Index in effect on June 1, 2016. The notice addresses the thresholds related to: the minimum interest charge and safe harbor penalty fees under the *Credit Card Accountability Responsibility and Disclosure Act* (CARD Act); the total loan amount, points and fees dollar trigger for high-cost mortgages under the *Home Ownership and Equity Protection Act* (HOEPA); and, and the maximum points and fees for qualified mortgages under the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd Frank). [TILA Adjustments] (This item is also included in the Enterprise & Consumer Compliance section above.

Accounting

Agencies Release Joint Statement Regarding New FASB Standard for Credit Losses

Four federal financial institution regulatory agencies issued a joint statement on June 17, 2016, regarding the Financial Accounting Standards Board's (FASB) June 16, 2016, release of a new accounting standard, Accounting Standards Update No. 2016-13, *Financial Instruments – Credit Losses: Measurement of Credit Losses on Financial Instruments*. The new standard introduces the current expected credit losses methodology (CECL) for allowances for credit losses, which allows a financial institution to leverage its current internal credit risk systems as a framework for estimating expected credit losses. The joint statement provides the agencies' initial supervisory views regarding the standard's implementation as well as support for a "reasonable and practical" implementation of the new accounting standard, commensurate with the size, complexity, and risk profile of each institution.

For financial institutions required to file financial statements with the U.S. Securities and Exchange Commission or the appropriate federal banking agency under the federal securities laws, application of the new accounting standard will become effective for fiscal years beginning after December 15, 2019, and for all other financial institutions for fiscal years beginning after December 15, 2020. Early adoption is encouraged, but limited to fiscal years beginning after December 15, 2018. The issuing agencies include the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the National Credit Union Administration. [Joint Statement]

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

To subscribe to the Americas FS Regulatory Center of Excellence, please visit the following Web page:
http://info.kpmg.us/subscribe-to-kpmg-us-fs-coe.html

Subscription inquiries may be directed to the Americas FS Regulatory Center of Excellence:
regulationfs@kpmg.com

Earlier editions of The Washington Report are available at:
https://home.kpmg.com/us/en/home/insights/2016/04/washington-reports.html

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