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The Washington Report

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Safety & Soundness

Federal Reserve Releases 2016 CCAR Results

On June 29, 2016, the Federal Reserve Board (Federal Reserve) announced the results of its 2016 Comprehensive Capital Analysis and Review (CCAR). The CCAR evaluates the capital adequacy and the capital planning processes of the largest U.S.-based bank holding companies (BHCs), including their planned capital actions such as dividend payments and share buybacks and issuances. The Federal Reserve may object to a capital plan based on quantitative or qualitative concerns. If the Federal Reserve objects to a capital plan, a firm may not make any capital distribution unless expressly authorized by the regulator.

For the 2016 CCAR, the Federal Reserve "did not object" (i.e., approved) thirty of the thirty-three capital plans submitted for review. One firm received a conditional approval and is required to submit a revised capital plan within six months to address deficiencies in the firm's capital planning process observed by the Federal Reserve. The Federal Reserve objected to the capital plans of two additional firms where "critical or widespread significant deficiencies in their capital planning process that undermine the overall reliability of the BHC's capital planning process" were found. The Federal Reserve did not object to any capital plans based on quantitative grounds, and separately noted that the common equity capital ratio--which compares high-quality capital to risk-weighted assets--of the 33 BHCs in the 2016 CCAR has more than doubled from 5.5 percent in the first quarter of 2009 to 12.2 percent in the first quarter of 2016. The two firms that failed to receive conditional approval were foreign banks. [Press Statement] [CCAR 2016]

Financial Stability Oversight Council Rescinds Designation of GE Capital

On June 29, 2016, the Financial Stability Oversight Council (FSOC or Council) voted to rescind its designation of GE Capital Global Holdings, LLC (GE Capital) as a nonbank financial company that could pose a threat to the stability of the U.S. financial system in the event of material financial distress (Nonbank SIFI). Under such a designation, GE Capital was subject to enhanced supervision by the Federal Reserve Board (Federal Reserve), and was also required to meet certain enhanced prudential standards. The FSOC had designated GE Capital as a Nonbank SIFI in July 2013, but has now unanimously determined that the firm no longer meets the standards for such a determination based on certain actions taken by the firm, including executing significant divestitures of bank and nonbank assets, transforming its funding model to increase reliance on long-term debt, and implementing a corporate reorganization that included focusing on three business lines aligned with certain of the company's industrial business. The firm is therefore no longer subject to enhanced prudential standards. [Press Statement] [Public Explanation]

FDIC Publishes Updated FAQs on Brokered Deposits

The Federal Deposit Insurance Corporation (FDIC) issued Financial Institution Letter 42-2016 on June 30, 2016, finalizing updates to its Frequently Asked Questions (FAQs) regarding identifying, accepting, and reporting brokered deposits. The FAQs were first published in January 2015 and updates were proposed in November 2015. The FDIC has retained a majority of the proposed updates but has added certain clarifications and new FAQs based on the comments received. The final FAQS include updates related to:

- Business professionals and deposit referral programs;
- Deposits gathered though "dual hatted," "dual," and "call center" employees, or contractors;
- Deposits underlying government-sponsored prepaid or debit card programs;
- Non-maturity deposits; and

- Actions depository institutions should take if they holds certain brokered deposits and fall below "well capitalized" for Prompt Corrective Action (PCA) purposes. [Press Statement]

Agencies Publish Interim Final Rules to Increase Civil Money Penalty Thresholds as Part of a "Catch-Up" for Inflation

The *Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (2015 Act) requires federal agencies with civil money penalty (CMP) authority to publish regulations to annually adjust each CMP authorized by law that the agency has jurisdiction to administer, in accordance with guidance published by the Office of Management and Budget. The 2015 Act also directs agencies to implement a "catch-up" inflation adjustment during 2016 based on a prescribed formula, for the purpose of maintaining the deterrent effect of CMPs and promoting compliance with the law. The 2015 Act requires agencies to publish their 2016 adjustments as an interim final rulemaking no later than July 1, 2016, with an effective date no later than August 1, 2016. Adjustments are to be published annually thereafter no later than January 15, beginning January 15, 2017.

The agencies publishing interim final rulemakings pursuant to the 2015 Act include:
- Office of Foreign Assets Control, with comment due by August 1, 2016. [Federal Register Notice]
- Financial Crimes Enforcement Network, with comment due August 1, 2016. [Federal Register Notice]
- Federal Trade Commission. [Federal Register Notice]
- Consumer Financial Protection Bureau, with comment due July 14, 2016. [Federal Register Notice]
- Office of the Comptroller of the Currency, with comment due August 30, 2016. [Federal Register Notice]
- Federal Deposit Insurance Corporation, with comment due September 1, 2016. [Federal Register Notice]
- Securities and Exchange Commission, with comment due August 15. 2016. [Federal Register Notice]
- Commodity Futures Trading Commission. [Federal Register Notice]

Enterprise & Consumer Compliance

FDIC to Conduct Small Business Lending Survey

The Federal Deposit Insurance Corporation (FDIC) announced the launch of a web-based survey of banks' small business lending practices on June 28, 2016. The survey of approximately 2,000 randomly selected FDIC-insured banks will be administered by the U.S. Census Bureau on behalf of the FDIC. The FDIC expects the survey data to provide additional insights into various aspects of small business lending, including:
- Nationally representative information on the general characteristics of banks' small business borrowers;
- Types of credit offered to small businesses; and
- The relative importance of commercial lending for banks of different sizes and business models.

The FDIC anticipates releasing the survey results late in 2017. [Press Statement]

CFPB Highlights Consumer Loans in Monthly Complaint Report

The Consumer Financial Protection Bureau (CFPB or Bureau) released its latest monthly complaint report on June 28, 2016. The CFPB notes that through May 2016, the Bureau has received more than 900,000 consumer complaints and that complaints regarding debt collection, credit reporting, and mortgages continue to be the top three most common complaints. The current issue highlights complaints related to consumer loans, including vehicle loans and leases, installment loans, title loans, and pawn loans. The consumer complaints in this category highlight:

- The majority of the complaints are concerned with vehicle loans and installment loans.
- The primary complaint addresses consumers' struggles to manage their loan, lease, or line of credit.
- Other complaints address payments processing issues, such as timely and correct application of payments, and understanding the impact of fees and interest rates. [Press Statement] [CFPB Monthly Complaint Report]

CFPB Releases Supervisory Highlights

The Consumer Financial Protection Bureau (CFPB or Bureau) released the 12th edition of its Supervisory Highlights on June 30, 2016, covering the period January 2016 to April 2016. The report highlights the Bureaus' supervisory observations in the areas of auto loan origination, mortgage loan origination, debt collection, small dollar lending, and fair lending. The report also highlights public and non-public enforcement actions related to automobile finance, remittances, and debt sales that resulted in a combined total of approximately $30 million in restitution to harmed consumers. [Supervisory Highlights]

Enforcement Action: CFPB and DOJ Take Action to Address Redlining Allegations

The Consumer Financial Protection Bureau (CFPB or Bureau) and the Department of Justice (DOJ) jointly announced on June 29, 2016, they had filed a complaint and a proposed consent order against a depository institution to address the agencies' allegations the institution violated the *Equal Credit Opportunity Act* (ECOA) and the *Fair Housing Act*. The complaint alleges the institution engaged in policies and practices to:

- Deny or avoid providing credit services to certain consumers based on the racial demographics of the neighborhoods in which the consumers live;
- Discriminate against applicants in the underwriting and pricing of certain mortgage loans based on race; and
- Require employees to treat applications differently based on race or other prohibited characteristics.

The proposed consent order would require the institution to pay a $3 million penalty and to:

- Revise its policies to prevent future discrimination;
- Provide fair lending training to its employees, including training on implicit racial bias;
- Open a new branch or loan production office in a high-minority neighborhood;
- Spend $100,000 per year during the term of the order on advertising in minority neighborhoods;
- Invest $500,000 to partner with community-based organizations that provide education, credit repair, and other assistance in minority neighborhoods;
- Pay $4 million to subsidize mortgage loans in the minority neighborhoods that were allegedly subject to "redlining;"
- Pay $2.78 million to consumers who were unlawfully denied loans or overcharged for their loans; and
- Offer subsidized credit to consumers who were wrongfully denied loans.

Insurance

Federal Insurance Office Releases Report on the Overall Effectiveness of the Terrorism Risk Insurance Program

On June 30, 2016, the U.S. Department of the Treasury's (Treasury) Federal Insurance Office (FIO) released a report entitled "*Report on the Overall Effectiveness of the Terrorism Risk Insurance Program.*" The report analyzes calendar year 2015 data pertaining to the participation of insurers in the Terrorism Risk Insurance Program (TRIP), as required by the *Terrorism Risk Insurance Program Reauthorization Act of 2015*. It concludes that the TRIP is an important mechanism in ensuring that terrorism risk insurance remains available and generally affordable in the United States.

Some of the key takeaways from the report include:

- Viewed on a national basis, the comprehensive insurance coverage being made available currently would not be possible in the absence of the Program.
- Despite some regional differences, premiums for terrorism risk insurance generally remained at a relatively small percentage of total premiums for TRIP-eligible lines policies as a whole, and in many cases insurers reported that coverage was provided for a premium as low as $0.
- Recent information from the credit rating agencies indicated that insurers have been seeking to lower net terrorism exposures. The data collected by Treasury is consistent with this observation. This reduction in concentration of exposure, coupled with the current structure of the Program indicates that an extremely large terrorism event would be necessary to trigger Federal payments under the Program that would not be entirely recovered through the recoupment mechanism.
- No evidence indicates that coverage would be more available in the absence of the Program. Instead, costs would presumably increase and availability decrease in certain areas.
- Continued evaluations will be made to focus on whether the terrorism risk insurance market is operating in a manner that allows coverage to be available and affordable to all commercial segments of the economy.

Treasury also acknowledged that the conclusions drawn from this data are limited, noting that insurers participated in the data collection on a voluntary basis and that this was the Treasury's first attempt to collect comprehensive data. It suggests that the observations supported by the data may change when more comprehensive data is obtained in the coming years. A proposed rule to require mandatory submission of information by insurers beginning in calendar year 2017 was published by Treasury in April 2016. [Press Statement] [Report]

NAIC Analysis Highlights Cybersecurity Insurance Data

On June 30, 2016, the National Association of Commissioners (NAIC) announced that more than 500 insurers provide businesses and individuals with cyber insurance. A majority of these coverages were written as endorsements to commercial and personal policies. The insurers reported direct written premium of nearly $484 million for stand-alone policies and approximately $1 billion in cybersecurity package policies.

The NAIC's announcement was based on its review of the Cybersecurity and Identity Theft Coverage Supplement that U.S. insurers' submitted with their annual statements. The data collection effort, created in 2015, seeks to help state insurance regulators understand which insurers provide cyber risk coverage, and to contribute toward the collection of baseline data to perform a trend analysis on exposures, premium volumes, and claims activities over the next several years. The Cybersecurity Task Force is expected to issue a report in August summarizing its key findings from the first-year data collection effort. It also intends to make improvements to the data collection effort, to be able to arrive at a more complete picture of how cybersecurity insurance markets are growing. The NAIC notes that a significant number of non-U.S. surplus lines insurers are also writing cyber-risk coverages though this information is not included among the NAIC filings. [Press Statement]

IAIS Releases Consultative Paper on Supervising the Conduct of Intermediaries

The International Association of Insurance Supervisors (IAIS) released a consultation paper on July 1, 2016, regarding "Approaches to Supervising the Conduct of Intermediaries." The paper, discusses approaches that IAIS Member organizations may consider when developing or revising their supervisory regimes for the supervision of intermediaries and implementing Insurance Core Principles (ICPs) 18 (Intermediaries) and the relevant aspects of ICP 19 (Conduct of business) in their supervisory frameworks. Building on a 2015 survey of IAIS Members regarding their approaches to the supervision of intermediaries, the paper discusses different types of intermediaries, the diversity of intermediation, supervision of intermediaries in the context of a broader supervisory framework, and supervisory approaches that may promote good conduct of business by intermediaries with reference to ICPs 18 and 19. The commentary period closes on August 1, 2016. [Press Statement]

Capital Markets and Investment Management

FSB and IOSCO Seeking to Address Systemic Risks in the Asset Management Industry

The Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) published a report entitled "*Guidance on cyber resilience for financial market infrastructures*" (Cyber Guidance) on June 29, 2016. The Cyber Guidance establishes internationally agreed guidance on cyber security for the financial industry. It seeks to bring consistency to the industry's ongoing efforts to enhance its cyber resilience, such as the ability of the financial market infrastructures (FMIs) to pre-empt cyber-attacks, respond rapidly and effectively to those attacks, and achieve faster and safer target recovery objectives if the attacks succeed. The Guidance is built on the following themes:

- Board and senior management attention is critical to a successful cyber resilience strategy;
- The ability to resume operations quickly and safely after a successful cyber-attack is paramount;
- FMIs should make use of good-quality threat intelligence and rigorous testing;
- FMIs should aim to instill a culture of cyber risk awareness and demonstrate ongoing re-evaluation and improvement of their cyber resilience at every level within the organization; and
- Cyber resilience is a collective endeavor of the whole "ecosystem" and cannot be achieved by an FMI alone.

[IOSCO Press Statement] [BIS Press Statement] [Guidance]

SEC Seeks Comment on Business Continuity and Transition Plan Proposal for Investment Advisers

On June 28, 2016, the Securities and Exchange Commission (SEC) proposed a rule that would require SEC-registered investment advisers to adopt and implement written business continuity and transition plans. The proposed rule seeks to ensure that investment advisers have plans in place to address operational and other risks related to a significant disruption in their operations in order to maintain the continuity of their advisory services and minimize client and investor harm. In particular, the proposed rule would require:

- Plans tailored to the complexity of each adviser's business operations and the risks of its business model.
- Plans to include policies and procedures addressing, as appropriate, specified components, particularly: maintenance of systems and protection of data; pre-arranged alternative physical locations; communication plans; review of third-party service providers; and provisions for transition in the event the adviser is winding down or is unable to continue providing advisory services.
- Advisers to review the adequacy and effectiveness of their plans annually and retain related records.

Concurrent with the release of the proposed rule, the SEC also issued related staff guidance on business continuity planning for registered investment companies, including the oversight of the operational capabilities of key fund service providers. Comments on the proposed rule are requested through September 6, 2016.
[Press Statement] [Proposed Rule] [Staff Guidance]

SEC Proposes to Increase Thresholds for Smaller Reporting Companies

On June 27, 2016, the Securities and Exchange Commission (SEC) approved proposed rules that would amend certain financial thresholds in the definition of a "smaller reporting company." The amendments would expand the number of companies that qualify as smaller reporting companies, thus qualifying them for scaled disclosures under Regulation S-K and Regulation S-X. As proposed, companies with less than $250 million in public float would qualify as a smaller reporting company, as would companies with zero public float if their revenues were below $100 million in the previous year. Comments are requested no later than August 30, 2016. [Press Statement] [Proposed Rule]

FINRA Seeks Rule Change to Disseminate Transaction Data for CMOs

On June 27, 2016, the Financial Industry Regulatory Authority (FINRA) issued SR-FINRA-2016-023 to announce that it is seeking approval from the Securities and Exchange Commission (SEC) to amend the FINRA Rule 6700 Series and the Trade Reporting and Compliance Engine (TRACE) dissemination protocols to provide for dissemination of transactions in an additional type of Securitized Products – specifically, collateralized mortgage obligations (CMOs). The proposal would also reduce the reporting timeframe for CMOs from end-of-day to 60 minutes; and simplify the reporting requirements for pre-issuance CMO transactions. Certain technical and conforming changes to the FINRA Rule 6700 Series and Rule 7730 in connection with the addition of CMOs are included as well. [SR-FINRA-2016-023] [Proposed Rule Change]

Enforcement Actions

The Financial Industry Regulatory Authority (FINRA) announced the following enforcement actions in the past week:

- FINRA fined a firm $6 million for a failure to provide complete and accurate trade data in an automated format within the stipulated time as requested by FINRA and the Securities and Exchange Commission. FINRA found that over an extended period of time the firm experienced significant failures with its blue sheet systems used to compile and produce blue sheet data, including programming errors in system logic and failure to implement enhancements to meet regulatory reporting requirements. These failures caused the firm to submit thousands of blue sheets to regulators that misreported or omitted critical information on over 1 million trades. In addition, FINRA found that a significant number of the company's blue sheet submissions did not meet regulatory deadlines, including one period when as much as 90 percent of the blue sheets were not submitted on a timely basis. The firm neither admitted nor denied FINRA's charges, but consented to FINRA's findings and agreed to retain an independent consultant to improve its policies, systems, and procedures related to blue sheet submissions.

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