The Washington Report

Americas FS Regulatory Center of Excellence

The week ended November 11, 2016

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Contents

1. Safety and soundness

1.1 CPMI releases report on Fast Payments

On November 8, 2016, the Bank for International Settlements' (BIS) Committee on Payments and Market Infrastructures (CPMI) issued a report on "Fast Payments." Fast payments can be defined as payments in which the transmission of the payment message and the availability of final funds to the payee occur in real time or near-real time and on as near to a 24-hour and 7-day (24/7) basis as possible.

The CPMI's report is focused on the development and importance of fast payment services. The CPMI states that across CPMI jurisdictions, the number of "so called" faster payment services more than doubled since 2010. They are expected to grow further, providing "more options for time sensitive payments, allowing consumers to better track spending, helping businesses better manage cash and supporting financial inclusion."

The report sets out key characteristics of fast payments, takes stock of different initiatives in CPMI jurisdictions, analyses supply and demand factors that may foster or hinder their development, sets out the benefits and risks, and examines the potential implications for different stakeholders, particularly central banks. The CPMI has asked central banks to consider their role in fostering faster payment systems, and to determine what support they should provide in the development of safe and efficient fast payments, including potential changes in their operational services. [Press Statement] [Report]

1.2 FDIC Vice Chairman addresses conference on issues related to global capital requirements

Thomas Hoenig, Vice Chairman of the Federal Deposit Insurance Corporation (FDIC), gave a speech before the 22nd Annual Risk USA Conference on November 9, 2016. In his remarks, titled "Strengthening global capital: an opportunity not to be lost," he stated that efforts to ensure the final calibration of the Basel III framework did not significantly increase overall capital requirements would "legitimize the inadequate status quo and undermine the long-run objective of real financial stability."

In particular, Vice Chair Hoenig stated his belief that "most measurements of adequate capital are too complicated, set too low, and often vary by jurisdiction in ways that weaken global financial stability." He favored the leverage ratio as the simplest measure of capital and, citing an example of a bank with a strong risk-based capital ratio but weak leverage ratio, suggested that the markets view the leverage ratio as a more credible measure of a bank's capital position than risk-based capital measures. He suggested that efforts to recalibrate the leverage ratio and introduce a risk-based component to the measure would undermine the measure's advantages and weaken its usefulness.

Vice Chair Hoenig also expressed concerns regarding Total Loss-Absorbing Capacity (TLAC) and its use as a means to justify lower levels of capital and require firms to issue more debt. [Hoenig Speech]

1.3 BIS working paper looks at macroeconomic impacts of Basel III

The Bank for International Settlements (BIS) has released Working Paper No. 591, which looks at the macroeconomic impacts of the Basel III capital framework and outstanding reform issues. The paper presents a conceptual framework to assess the macroeconomic costs and benefits of the core Basel III reforms, including the leverage ratio surcharge that is being considered for global systemically important banks (G-SIBs). Building on the Basel Committee for Banking Supervision's (BCBS) long-term economic impact study, the assessment framework provides a conservative estimate of the amount of additional bank capital that is associated with the Basel III enhancements, including the minimum risk-weighted capital requirements, the leverage ratio, and different calibration options for a G-SIB leverage ratio surcharge. In addition, the assessment framework accounts for the effect of the new minimum requirements on the total loss-absorbing capacity of G-SIBs in resolution and provides estimates of the likely impact on net economic benefits from regulation-implied changes to bank capital allocation (risk shifting/RWA compression).

The results suggest that the Basel III reforms should be expected to yield sizeable net marginal macroeconomic benefits. Further, based on the assumption that the BCBS is focused on not significantly increasing overall capital requirements in the final calibration decisions, the paper concludes that policymakers should have sufficient flexibility to activate countercyclical capital buffers and similar requirements as needed. [BIS Working Paper No. 591]

2. Enterprise and consumer compliance

2.1 FFIEC releases revised Interagency Consumer Compliance Rating System

On November 7, 2016, the Federal Financial Institutions Examination Council (FFIEC) issued final revisions to the Uniform Interagency Consumer Compliance Rating System (CC Rating System) to reflect regulatory, supervisory, technological, and market changes that have occurred over the years since the system was established in 1980. In particular, the revisions more fully align the CC Rating System with the Agencies' current risk-based, tailored examination processes.

The primary purpose of the CC Rating System is to ensure that regulated financial institutions are evaluated in a comprehensive and consistent manner and that supervisory resources are appropriately focused on areas exhibiting risk of consumer harm and on institutions that warrant elevated supervisory attention. The revised CC Rating System emphasizes the importance of institutions' compliance management systems, with emphasis on compliance risk management practices designed to manage consumer compliance risk, support compliance, and prevent consumer harm. The revisions do not set new or higher supervisory or regulatory expectations for financial institutions.

The revised CC Rating System includes three categories of assessment factors:

- Board and Management Oversight;
- Compliance Program; and
- Violations of Law and Consumer Harm.

Institutions are rated on a scale of 1 to 5, representing an increasing order of supervisory concern. A rating of "1" or "2" represents satisfactory or better performance while a rating of "3," "4," or "5" indicates less than satisfactory performance. It will be applicable to examinations that begin on or after March 31, 2017. [FFIEC Guidance] [OCC Bulletin 2016-39] [FDIC FIL-75-2016]

2.2 CFPB amends and reissues Service Provider Bulletin

Concurrent with the release of its Fall 2016 issue of Supervisory Highlights (October 31, 2016), the Consumer Financial Protection Bureau (CFPB or Bureau) announced that it had amended and reissued its service provider bulletin (CFPB Bulletin 2012-03, Service Providers) as CFPB Compliance Bulletin and Policy Guidance 2016-02, Service Providers. The amendment clarifies that the Bureau expects that "the depth and formality of the entity's risk management program for service providers may vary depending upon the service being performed – its size, scope, complexity, importance, and potential for consumer harm – and the performance of the service provider in carrying out its activities in compliance with Federal consumer financial laws and regulations. The CFPB determined the amendment was needed to clarify that supervised entities have flexibility to tailor their risk management program and to allow for appropriate risk management of individual service providers.
[CFPB Bulletin 2016-02] [Supervisory Highlights]

2.3 CFPB publishes final rule on prepaid cards

On November 8, 2016, the Consumer Financial Protection Bureau's (CFPB or Bureau) final rule establishing new consumer compliance requirements for prepaid accounts pursuant to the Electronic Funds Availability Act and its implementing regulation, Regulations E, and the Truth-in-Lending Act and its implementing regulation, Regulation Z, was published in the Federal Register. The new rules apply to a range of prepaid accounts, including traditional prepaid cards, payroll cards, student financial aid disbursement cards, certain government benefit cards, mobile wallets, person-to-person payment products, and other electronic prepaid accounts that can store funds.

In general, the final rule:

- Establishes pre-acquisition disclosure standards for prepaid accounts that provide consumers with account information, including fees associated with such accounts;
- Extends Regulation E coverage, including error resolution and limited liability protections, to prepaid accounts;
- Defines credit features that may be offered in conjunction with prepaid accounts and clarifies the applicability of Regulation Z's credit card rules;
- Requires financial institutions to post prepaid account agreements on their websites; and
- Prohibits the application of certain practices to prepaid accounts, including offsetting debt and charging declined transaction fees.

The final rule generally becomes effective October 1, 2017, though certain provisions, such as the requirement to submit prepaid account agreements to the Bureau, are not effective until October 1, 2018. [FDIC FIL-76-2016] [Final Rule]

2.4 Enforcement Actions

The Federal Trade Commission (FTC) announced that it had filed a complaint against a prepaid card company for allegedly deceiving consumers regarding access to funds deposited on their prepaid card product. The FTC alleges the company marketed the prepaid cards as an alternative way for consumers to store and immediately access their funds. In practice, however, many consumers were unable to access their loaded funds, either because the company denied or delayed activation of the card or because it blocked consumers from using it. According to the complaint, consumers must go through an identity verification process as required by law before the prepaid debit card could be activated and many people had difficulty satisfying this requirement. Further, consumers that closed their accounts and requested refunds did not receive their funds for several weeks. The FTC is seeking redress for harmed consumers, rescission or reformation of contracts, and disgorgement of ill-gotten gains.

3. Capital markets and investment management

3.1 IOSCO seeks input on Other Credit Rating Agency Products

The Board of the International Organization of Securities Commissions (IOSCO) published a consultation report on November 7, 2016 titled "Other CRA Products," which seeks further insight into how market participants use non-traditional products or services offered by credit rating agencies (CRAs). The objective of the consultation report is to clarify information provided by respondents to two survey questionnaires on Other CRA Products that the IOSCO published in 2015. The report also asks respondents to comment on the IOSCO's current understanding of these CRA products and services and how they differ from the traditional issuer-paid or subscriber-paid credit ratings.

Other CRA Products are certain non-traditional, credit-related products and services, including private ratings, confidential ratings, expected ratings, indicative ratings, prospective ratings, provisional ratings, preliminary ratings, credit default swap spreads, bond indices, and portfolio assessment tools. The IOSCO states the products are important because market participants may use them to make investment and other credit-related decisions. Issuers and obligors may also use these products to make decisions about whether to obtain a credit rating from a particular CRA.

The IOSCO is seeking input on whether additional CRA products, other features, or uses should be considered as well as whether these items should be covered by the Code of Conduct and the IOSCO CRA Principles. Comments are requested by December 5, 2016. [Press Statement]

3.2 Enforcement Action

The Securities and Exchange Commission (SEC) ordered a foreign firm to pay more than $1.7 million for misleading investors into trading binary options over the internet. The SEC's order indicated that the firm not only failed to register the binary options or register as a broker-dealer to legally sell the investment to U.S. investors, it also failed to disclose on its trading platforms that, with respect to binary options, there was a greater potential for investors to lose rather than earn money.

Coincident with the announcement of the order, the SEC issued an Investor Alert detailing red flags that signal binary options fraud and warning investors to never put in more money in an attempt to win back money they lost. The Alert reminds investors that they may not have the full protection of the U.S. securities laws when they purchase binary options from an unregistered firm that isn't subject to SEC oversight.

Contact us

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

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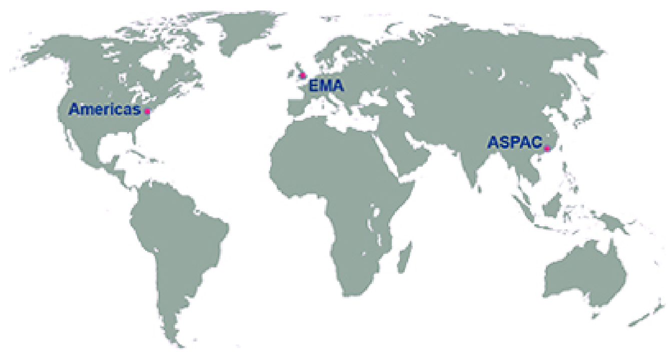

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