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1. Safety and soundness

1.1 Federal Reserve proposes to fully apply its supervisory rating system to most SLHCs

On December 9, 2016, the Federal Reserve Board (Federal Reserve) released a proposed rule that would fully apply its existing supervisory rating system for bank holding companies to savings and loan holding companies (SLHCs) as well. The rating system, which is referred to as the "RFI rating system," is used in part to determine the safety and soundness of financial institutions as well as supervisory responses.

Since July 2011, the Federal Reserve has regulated and supervised SLHCs (as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act) and has applied the RFI Rating System to those SLHCs on an "indicative" basis, which describes how the SLHC would be rated under the system but does not always trigger a supervisory response. The Federal Reserve is now proposing to fully apply the RFI rating system to most SLHCs except those engaged in significant insurance or commercial activities. Comments are requested through February 13, 2017.

[Press Statement] [Notice and Request for Comment]

1.2 Federal Reserve finalizes technical amendments to the GSIB surcharge rule and issues interim final rule delaying related reporting requirements

On December 9, 2016, the Federal Reserve Board (Federal Reserve) adopted a final rule that makes technical amendments to its rule regarding risk-based capital surcharges for U.S.-based global systemically important bank holding companies (GSIB surcharge rule). The amendments to the GSIB surcharge rule provide that a bank holding company subject to the rule must:

- Calculate its surcharge (under method 1 and method 2) using year-end data, while reporting the underlying data on a quarterly basis; and
- Scale the calculation of it surcharge score to billions of dollars.

The GSIB surcharge rule considers factors such as the nature, size, scale, concentration, interconnectedness, and mix of activities of companies to determine whether the company is a GSIB, as well as the consequent surcharge that needs to be maintained by these GSIBs. These factors are captured in the method 1 and method 2 scores of the GSIB surcharge rule, which use quantitative metrics to capture the five indicators of systemic importance. The final rule becomes effective 30 days after publication in the Federal Register.

[Press Statement] [Final Rule]

Coincident with the release of the final rule, the Federal Reserve invited comment on an interim final rule that extends the timeline for certain firms to complete reporting requirements related to the GSIB surcharge rule on FR Y-15 (Banking Organization Systemic Risk Report). The FR Y-15 is required to be filed by U.S. bank holding companies, covered savings and loan holding companies, and intermediate holding companies with total consolidated assets of $50 billion or more.

The Federal Reserve recently revised FR Y-15 to collect data used in the calculation of the short term wholesale funding score on Schedule G. The interim final rule delays the initial filing date of Schedule G for all firms, *except* for those that have $700 billion or more in total consolidated assets or $10 trillion or more in assets under custody. These firm must complete Schedule G for FR Y-15 filed as of December 31, 2016. Further:

- Firms that have less than $10 trillion in assets under custody and less than $700 billion in total consolidated assets, but have $250 billion or more in total consolidated assets or $10 billion or more in on-balance-sheet foreign exposure must complete Schedule G for the FR Y-15 filed as of December 31, 2017; and
- Firms that have less than: $10 trillion in assets under custody; $250 billion in total consolidated assets; and $10 billion in on-balance-sheet foreign exposure must complete Schedule G for the FR Y-15 filed as of June 30, 2018.

The interim final rule is effective immediately though a 60 day comment period will follow publication in the Federal Register.

[Interim Final Rule]

1.3 BIS working paper considers effect of countercyclical capital buffer on lending in general

On December 6, 2016, the Bank for International Settlements (BIS) released Working Paper No. 593 entitled, "*The countercyclical capital buffer and the composition of bank lending*." The paper seeks to determine whether macroprudential regulations on residential lending influence commercial lending behavior as well. Looking specifically at the introduction of the countercyclical capital buffer (CCB) in Switzerland beginning in 2012, the authors found that activation and implementation of the CCB led to both an increase in the amount and the cost of lending to corporations but especially to small firms and somewhat (for non-mortgage credit) to those active in commercial real estate. The authors conclude that a targeted macroprudential policy to squeeze lending in one place leads to an expansion of lending in another adjacent place.

[Working Paper]

2. Enterprise and consumer compliance

2.1 Enforcement actions

The Federal Reserve Board (Federal Reserve) and the Consumer Financial Protection Bureau (CFPB or Bureau) announced the following enforcement actions:

— The Federal Reserve imposed a civil money penalty of $960,000 and issued a cease and desist order against a bank to address the bank's participation and that of its agent in practices that violated Section 5 of the Federal Trade Commission Act (FTC Act) governing unfair and deceptive acts or practices. The bank's agent provided financial aid disbursement services to students. The Federal Reserve found that the agent omitted material information in its marketing materials and on its website regarding how students might obtain their financial aid disbursed funds as well as the fees, features, and limitations of the disbursement product. The agent previously reimbursed more than 500,000 students approximately $24 million in fees paid when the agent's marketing materials and website contained misleading information. The Federal Reserve is assessing the civil money penalty against the bank for its failure to provide effective management and oversight of the agent.

— The CFPB entered into separate consent orders with each of three reverse mortgage companies to address the CFPB's allegations that the firms each engaged in deceptive advertising and made false claims regarding their reverse mortgage products. The CFPB's orders require the companies to cease deceptive advertising practices, implement systems to ensure they are complying with all laws, and pay civil monetary penalties that, in the aggregate, total $790,000.

3. Insurance

3.1 House passes bill to increase transparency in international regulatory discussions

On December 7, 2016, the House of Representatives passed H.R. 5143, The Transparent Insurance Standards Act, which seeks to enhance congressional oversight of international deliberations relating to insurance standards. The bill directs federal regulators to solicit public comments, consult with state officials, and report to the Congress before adopting international capital standards or other requirements for U.S. insurance companies. The bill would also establish a series of requirements to be met before the Federal Insurance Office (FIO) or the Federal Reserve Board (Federal Reserve) agree to the adoption of a final international insurance standard. In particular, the bill:

— Mandates the FIO and the Federal Reserve to publish any proposed final standard and allow for public comment. Involved agencies are required to provide a joint analysis of the impact the standard would have on consumers and the U.S. insurance markets;

— Requires the Federal Reserve to first promulgate its domestic capital standard rule before agreeing to any international standard relating to capital;

— Sets negotiating objectives for U.S. parties;

— Mandates that the FIO and the Federal Reserve report and testify before Congress semiannually; and

— Ensures that the Independent Member with Insurance Expertise who sits on the Financial Stability Oversight Council (FSOC) assists the FSOC in international discussions and attends meeting of international bodies where insurance standards are discussed.

[Press Statement] [H.R. 5143]

4. Capital markets and investment management

4.1 House passes package of financial services bills

On December 5, 2016, the House of Representatives passed H.R. 6427, the Creating Financial Prosperity for Businesses and Investors Act, which is a compilation of six measures that previously passed the House with bi-partisan support. Jeb Hensarling, Chairman of the House Committee on Financial Services, characterized the bills as being "aimed at increasing investment opportunities and boosting the economy." The six measures include:

- The Small Business Capital Formation Enhancement Act (H.R. 4168): among other things, requires the Securities and Exchange Commission (SEC) to respond to any findings and recommendations put forth by the SEC's Government-Business Forum on Small Business Capital Formation.
- The SEC Small Business Advocate Act (H.R. 3784): establishes the Office for Small Business Capital Formation within the SEC to assist small businesses and their investors in resolving significant problems with the SEC or self-regulatory organizations. The office helps propose changes to statutes, regulations, and rules to benefit small businesses and their investors and facilitate capital formation. The bill also establishes the SEC Small Business Advisory Committee to provide the SEC with advice on capital formation, securities trading, public reporting, and corporate governance for emerging, privately held businesses and smaller public companies.
- The Supporting America's Innovators Act (H.R. 4854): amends an "exemption from registration" under the Investment Company Act of 1940 by increasing the investor limitation from 100 to 250 persons for a qualifying venture capital fund. A qualifying venture capital fund is also not allowed to purchase more than $10 million in securities in any one issuer.
- The Fix Crowdfunding Act (H.R. 4855): updates rules for crowdfunding under Title III of the Jumpstart Our Business Startups (JOBS) Act, and among other things, raises the dollar amount limit on funds that can be invested in by special crowdfunding vehicles and clarifies certain requirements and exemptions for issuing companies.
- The Fair Investment Opportunities for Professional Experts Act (H.R. 2187): amends the definition of an accredited investor under the Securities Act of 1933 to include individuals who possess a certain net worth, income, current securities-related license, and the educational background or job experience to qualify as having professional subject-matter knowledge related to a particular investment.
- The U.S. Territories Investor Protection Act (H.R. 5322): amends the Investment Company Act to terminate an exemption from being regulated by the Act for investment companies located in Puerto Rico, the Virgin Islands, and any other possession of the United States. The bill provides a three-year safe harbor for investment companies that currently enjoy this exemption.

[Press Statement]

4.2 CFTC re-proposes position limits rule and finalizes rule on aggregation of positions

On December 5, 2016, the Commodity Futures Trading Commission (CFTC) re-proposed regulations that would implement limits on speculative futures and swaps positions. The rule, which is required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), would

- Establish speculative position limits for 25 core physical commodity futures contracts and their "economically equivalent" futures, options, and swaps;
- Update the definition of bona fide hedging position as well as exemptions for bona fide hedging positions in physical commodities. Exemptions are being re-proposed for, among other things, positions that are established in good faith prior to the effective date of the initial limits that would be established by final regulations.
- Include requirements and acceptable practices for Designated Contract Markets (DCMs) and Swap Execution Facilities (SEFs) for the purposes of setting position limits for the 25 referenced contracts as well as acceptable practices for exchange position limits or accountability rules in all other listed contracts, including excluded commodities;

- Permit exchange recognition of non-enumerated bona fide hedging positions, certain enumerated anticipatory hedge positions, and granting of spread exemptions; and
- Update reporting requirements under the CFTC's regulations.

The re-proposal will be open for public comment for a period of 60 days following publication in the Federal Register.

In a related action, the CFTC also approved a final rule on the aggregation of positions. The rule makes amendments to the CFTC's current account aggregation standards to permit additional exemptions from aggregation, including where:

- Sharing information would violate or create reasonable risk of violating Federal, state or foreign jurisdiction law or regulation.
- Ownership interest is greater than 10 percent in an entity whose trading is independently controlled and a notice filing is submitted to the CFTC.
- Ownership results from broker-dealer activities in the normal course of business as a dealer.

The final rule becomes effective 60 days after publication in the Federal Register.

[Press Statement]; [Reproposal Position Limits for Derivatives]; [Final Rule Aggregation of Positions]

4.3 Enforcement Actions

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

- The SEC announced that it had entered into an agreement with a firm settling the SEC's charges that the firm violated federal securities laws by failing to register the security-based swaps that it sold online to shareholders in pre-IPO (initial public offering) companies. The firm sought to provide liquidity for employees of private growth-stage companies. Its platform matched these shareholders with investors seeking to invest in the potential economic return on those shares. To do this, the firm conducted transactions through contracts with the shareholders and investors, and payment provisions were triggered by events such as mergers, acquisitions, or IPOs at the underlying company. The firm however, neither registered these swap transactions, nor sold them through a national securities exchange as required by federal securities laws. The firm consented to the SEC's order without admitting or denying the findings and agreed to pay a civil monetary penalty of $80,000 to settle charges.
- The CFTC charged an investment banking firm for failing to properly report certain non-deliverable forward transactions to a swap data repository (SDR) and failing to timely report to an SDR a large number of foreign exchange (FX) swap, FX forward, and non-deliverable forward transactions in violation of the Commodity Exchange Act (CEA) and CFTC Regulations. Accurate and complete swap reporting are critical to ensure market integrity, and the CEA and the CFTC's regulations require parties to a swap transaction to report related information to a registered SDR in a timely manner. The reporting requirements prescribed by these regulations are designed to enhance transparency, promote standardization, and reduce systemic risk. The CFTC issued an Order requiring the bank to pay a civil monetary penalty of $450,000 and to cease and desist from committing further violations of the CEA and CFTC regulations to settle charges.

5. Financial crimes

5.1 FINRA fines investment bank for AML deficiencies

The Financial Industry Regulatory Authority (FINRA) announced on December 5. 2016 that it had fined an investment bank $16.5 million for ineffective anti-money laundering (AML) programs. FINRA investigations revealed that the firm relied on its registered representatives to identify and escalate potentially suspicious trading, which did not always happen in practice. FINRA also found the effectiveness of the firm's automated surveillance system used to monitor suspicious transactions was impeded because many of the data feeds were missing information.

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