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The Washington Report

Americas FS Regulatory Center of Excellence

The week ended January 13, 2017

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1.1 FSB publishes final policy recommendations regarding asset management activities

On January 12, 2017, the Financial Stability Board (FSB) published a document outlining 14 final policy recommendations to address "structural vulnerabilities" from asset management activities that could potentially present financial stability risks. These vulnerabilities include:

- Liquidity mismatch between fund investments and redemption terms and conditions for open-ended fund units;
- Leverage within investment funds;
- Operational risk and challenges at asset managers in stressed conditions; and
- Securities lending activities of asset managers and funds.

The final recommendations reflect a number of changes to the proposal published in June 2016, including, in particular, changes to the recommendations on liquidity to: encourage authorities to develop consistent reporting requirements; better distinguish the information that is useful to authorities and investors; and emphasize the exploratory nature of system-wide stress testing at this time. The purposes and uses of leverage measures also have been clarified.

[Press Statement] [Final Recommendations]

1.2 Agencies extend comment period for cyber standards advance notice of proposed rulemaking

On January 13, 2017, the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation issued a joint notice to extend the comment period for their advance notice of proposed rulemaking (ANPR) on enhanced cyber risk management standards. Comments will now be accepted through February 17, 2017.

The agencies are considering applying five categories of enhanced cyber standards primarily to the large and interconnected entities under their supervision and the service providers to those entities. The categories of cyber standards include: cyber risk governance; cyber risk management; internal dependency management; external dependency management; and incident response, cyber resilience, and situational awareness.

[Press Statement] [ANPR extension]

2. Enterprise and consumer compliance

2.1 CFPB releases survey results for consumer experiences with the debt collection industry

On January 12, 2017, the Consumer Financial Protection Bureau (CFPB or Bureau) released the results of a debt collection survey conducted by the CFPB in 2014 and 2015 to understand consumers' experiences with the debt collection industry. The survey is part of an ongoing effort by the CFPB to explore industry practices and consumer experiences with debt collectors. Key survey findings include the following:

- Approximately one-third of consumers with a credit record report they were contacted by a creditor or debt collector in the previous 12 month period. Nearly three-quarters of those consumers reported they were contacted by more than one creditor or debt collector during that period.
- Past-due medical bills, credit cards, and student loans were among the most frequently cited debts consumers were contacted about.
- Fifty-three percent of consumers contacted about a debt in the year prior said at least one collection effort was mistaken in some way. These consumers reported that the creditor or collector sought the incorrect amount, that the debt was not owed, or that the person owing the debt was a family member.
- Twenty-seven percent of consumers approached about debt said they felt threatened by the conduct of the creditor or collector who most recently contacted them.
- About 40 percent of consumers contacted about a debt in collection said they asked at least one debt collector or creditor to stop contacting them. Of these consumers,

three-in-four said the debt collector did not honor the request to cease contact attempts.

- Thirty six percent of consumers contacted about a debt in collection said that the creditor or collector who most recently contacted them called between 9 p.m. and 8 a.m, which are considered inconvenient hours. Debt collectors generally cannot call at times they know to be inconvenient unless the consumer specifically agrees to it.
- Thirty seven percent of consumers contacted about a debt in collection reported that the most recent creditor or collector to contact them usually did so four or more times in a week.
- Fifteen percent of consumers contacted about a debt in collection over the prior year report being sued.

Concurrently, the CFPB provided a link to a collection of videos documenting the debt collection stories of several individual consumers.

The CFPB also released a white paper highlighting potential risks to consumers' personal information posed by online sales of consumer debt.

[Survey Report] [Debt Stories] [Online Debt Sales Report]

2.2 Enforcement action

The Consumer Financial Protection Bureau (CFPB or Bureau) announced that it had entered into a consent order with two medical debt collection law firms and their president to address the CFPB's allegations they violated the Fair Debt Collection Practices Act and the Fair Credit Reporting Act by: falsely representing that letters and calls were from attorneys attempting to collect on a debt when no attorney had yet reviewed the account; failing to ensure the accuracy of the consumer information furnished to credit reporting companies; and using improperly notarized affidavits in lawsuits filed against consumers. The consent order requires the firms and their president to collectively pay approximately $575,000 in refunds to harmed consumers and a civil money penalty of $78,800.

3. Capital markets and investment management

3.1 FSB publishes final policy recommendations regarding asset management activities

On January 12, 2017, the Financial Stability Board (FSB) published a document outlining 14 final policy recommendations to address "structural vulnerabilities" from asset management activities that could potentially present financial stability risks. These vulnerabilities include:

- Liquidity mismatch between fund investments and redemption terms and conditions for open-ended fund units;
- Leverage within investment funds;
- Operational risk and challenges at asset managers in stressed conditions; and
- Securities lending activities of asset managers and funds.

The final recommendations reflect a number of changes to the consultative report published in June 2016, including, in particular, changes to the recommendations on liquidity to: encourage authorities to develop consistent reporting requirements; better distinguish the information that is useful to authorities and investors; and emphasize the exploratory nature of system-wide stress testing at this time. The purposes and uses of leverage measures also have been clarified.

[Press Statement] [Final Recommendations]

This item was also included under the Safety and Soundness section.

3.2 CFTC proposed amendments to recordkeeping rules

On January 12, 2017, the US Commodity Futures Trading Commission (CFTC) unanimously approved proposed amendments to Regulation 1.31, which contains the recordkeeping requirements under the Commodity Exchange Act and CFTC regulations. The proposed amendments would eliminate certain outdated terms and provisions, add new definitions, and update language to reflect advances in information technology. In addition to providing recordkeepers with greater flexibility regarding the retention and production of regulatory records, the proposed amendments would remove the requirements for electronic records to be kept in their native file format and for recordkeepers to enter into an arrangement with a third-party technical consultant with respect to electronically stored information. The CFTC intends the proposed rule to be technology-neutral so that the regulation may withstand technological advancements in the future. Comments on the proposed rule will be accepted for a period of 60 days following publication in the Federal Register.

[Press Statement]

3.3 SEC outlines 2017 examination priorities

The Securities and Exchange Commission's (SEC) Office of Compliance Inspections and Examinations (OCIE) released its 2017 priorities on January 12, 2017. These priorities address issues across a variety of financial institutions, including investment advisers, investment companies, broker-dealers, transfer agents, clearing agencies, private fund advisers, national securities exchanges, and municipal advisors. The areas of examination focus will include:

— *Retail Investors* – OCIE will undertake examinations to review firms delivering investment advice through electronic mechanisms, sometimes referred to as "robo-advising," as well as wrap fee programs in which investors are charged a single bundled fee for advisory and brokerage services with the objective of protecting the retail investors.

— *Senior Investors and Retirement Investments* – The OCIE's focus will include public pension advisers, senior investors and individuals investing for retirement. A key issue will include identifying financial exploitation.

— *Market-Wide Risks* – OCIE will continue its focus on registrants' compliance with the SEC's Regulation SCI and anti-money laundering rules. New initiatives for 2017 will include an evaluation of money market funds' compliance with the SEC's amended rules, which became effective in October 2016.

— *FINRA* – OCIE will continue inspections of the Financial Institution Regulatory Authority's (FINRA) operations and regulatory programs and focus resources on assessing the examinations of individual broker-dealers.

— *Cybersecurity* – OCIE will continue its ongoing initiative to examine for cybersecurity compliance procedures and controls, including testing the implementation of those procedures and controls at broker-dealers and investment advisers.

The SEC has indicated that the published priorities are not exhaustive and may be adjusted in light of market conditions, industry developments, and ongoing risk assessment activities.

[Press Statement]

3.4 Enforcement actions

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

— The SEC announced that a broker-dealer firm has agreed to pay a $22.6 million penalty to settle the SEC's charges the firm misled customers regarding the pricing of trades. The payment amount includes $5.2 million in disgorgement of ill-gotten gains, interest of more than $1.4 million, and a penalty of US$16 million.

— The SEC announced that a dually-registered investment adviser and broker-dealer agreed to pay a $13 million penalty to settle charges that it overbilled some wealth management clients due to coding and other billing system errors. The SEC's investigation found that billing errors affected more than 149,000 clients and it received more than $16 million in excess fees as a result of the errors. The firm has since reimbursed affected customers. In addition, the SEC charged the firm with violating the SEC's custody rules with regard to surprise examinations by failing to provide its independent accountant with an accurate or complete list of client funds and securities for examination, as required. The firm agreed to settle the case without admitting or denying the charges.

— The CFTC ordered a Futures Commission Merchant and swap dealer to pay $900,000 to settle charges the firm failed to diligently supervise officers', employees', and agents' processing of exchange and clearing fees charged to customers trading on the Chicago Mercantile Exchange. In addition, the CFTC charged that the firm did not have adequate written policies and procedures in place for clearing and exchange fee reconciliations. The CFTC alleged that these inefficiencies might have led to instances in which the firm overcharged some customers.

— The SEC charged two brokers with fraudulently using an in-and-out trading strategy—involving frequent buying and selling of securities—to generate commissions though the strategy was inconsistent with the risk profile of, and unsuitable for, the affected customers. The SEC's investigation also found that the brokers had not performed any due diligence to determine whether their investment strategy was in the interest of their customers and whether the transaction costs could deliver a minimal profit for their customers.

— The SEC announced that it had reached an agreement with a bank to pay a penalty of $6.6 million to settle charges the firm understated its risk-weighted assets and overstated certain risk-based capital ratios in quarterly and annual reports provided to investors. The firm allegedly deviated from regulatory capital rules by excluding certain assets from the capital calculations though they had been consolidated onto the bank's balance sheet and the bank had not received prior regulatory approval to do so. The firm agreed to settle the charges without admitting or denying the SEC's findings.

4. Insurance

4.1 US and EU reach final covered agreement on insurance and reinsurance regulation

On January 13, 2017, the US Department of the Treasury and the Office of the U.S. Trade Representative (USTR) jointly announced the completion of negotiations for a covered agreement on reinsurance and insurance regulation with the European Union (EU). The agreement covers three areas of insurance oversight: reinsurance, group supervision, and the exchange of insurance information between regulators.

Under Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Secretary of the Treasury, through the Federal Insurance Office (FIO), and USTR are authorized to jointly negotiate a covered agreement with one or more foreign governments, authorities, or regulatory entities.

[Press Statement] [Agreement]

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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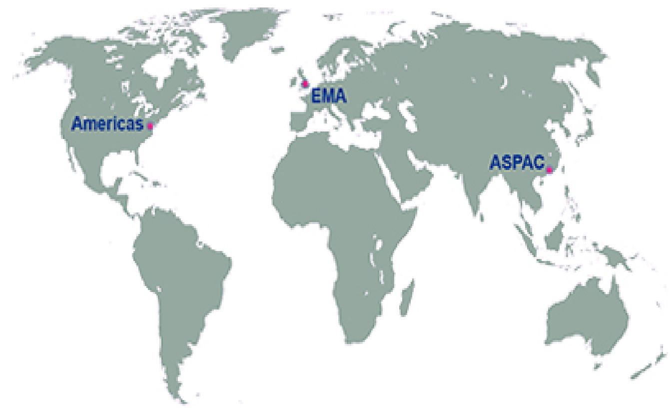

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