The Washington Report

Americas FS Regulatory Center of Excellence

The week ended February 3, 2017

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Contents

1. Safety and soundness

1.1 Regulators release stress test scenarios for 2017; Federal Reserve revises CCAR rules for large and noncomplex firms

On February 3, 2017, the Federal Reserve Board (Federal Reserve) and the Office of the Comptroller of Currency (OCC) released the stress testing scenarios for 2017.

— The Federal Reserve released the scenarios to be used by banking organizations and supervisors for the 2017 Comprehensive Capital Analysis and Review (CCAR) and the stress test exercises required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Three scenarios are provided, including baseline, adverse, and severely adverse, incorporating 28 variables. As in prior years, bank holding companies (BHCs) with large trading operations will be required to factor in a global market shock as part of their scenarios, and BHCs with substantial trading or processing operations will be required to incorporate a counterparty default scenario.

  The Federal Reserve also published a narrative that describes the general economic conditions in the scenarios and changes in the scenarios from the previous year and summary instructions for firms subject to the Large Institution Supervision Coordination Committee (LISCC) framework and large and complex CCAR firms (defined to include those firms with total consolidated assets of at least $250 billion, nonbank assets of $75 billion or more, or are designated as U.S. global-systemically important banks). BHCs subject to CCAR are required to submit their capital plans and stress testing results to the Federal Reserve on or before April 5, 2017. The Federal Reserve will announce the results of its supervisory stress tests by June 30, 2017, with the exact date to be announced later.

  [Press Statement] [2017 Supervisory Scenarios] [CCAR guidance]

— The OCC released stress test scenarios to be used by covered institutions with more than $10 billion in total consolidated assets when conducting the Dodd-Frank Act stress tests. The supervisory scenarios were developed in coordination with the Federal Reserve and the Federal Deposit Insurance Corporation (FDIC).

  [Press Statement]

Note: the FDIC released stress test scenarios for FDIC-covered institutions on February 6, 2017. [Press Statement]

In an earlier action on January 30, 2017, the Federal Reserve adopted a final rule that revises the capital plan and stress test rules for BHCs with $50 billion or more in total consolidated assets and U.S. intermediate holding companies (IHCs) of foreign banking organizations. Under this final rule, large and noncomplex firms (defined to include those firms with total consolidated assets of at least $50 billion but less than $250 billion, and nonbank assets of less than $75 billion, and that are not U.S. global-systemically important banks) will no longer be subject to the qualitative component of the annual CCAR beginning in 2017 Firms meeting the criteria will, however, continue to be subject to the quantitative component of CCAR.

The final rule also modifies certain regulatory reports to collect additional information on nonbank assets and to reduce reporting burdens for large and noncomplex firms. For all bank holding companies subject to the capital plan rule, the final rule:

— Simplifies the applicability of the capital plan and the stress test rules;

— Reduces the amount of additional capital distributions that a bank holding company may make without seeking the prior approval; and

— Extends the range of dates the Federal Reserve may use for the trading and counterparty scenario component used in the stress test rules.

The final rule does not apply to BHCs with total consolidated assets of less than $50 billion or to any state member bank or savings and loan holding company. Exempt firms must have less than $10 billion in foreign exposure. This rule will be effective 30 days after publication in the Federal Register.

[Press Statement] [Final Rule]

1.2 FSB consults on guidance for CCP resolution and resolution planning

The Financial Stability Board (FSB) published draft Guidance on Central Counterparty Resolution and Resolution Planning on February 1, 2017. The draft Guidance builds on the FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions (Key Attributes), which sets out a framework for resolution of financial market infrastructures (FMI). This framework states the objectives underpinning the resolution of an FMI and a range of powers and tools that should be made available to resolution authorities to resolve a failing FMI. When final, the Guidance is expected to assist authorities and jurisdictions with implementing effective resolution regimes and developing credible resolution strategies and plans for central counterparties (CCPs). The overarching objective of the guidance is that CCPs do not themselves become a new source of "too-big-to-fail risk" as they become an increasingly important part of the financial system.

The draft Guidance covers a number of aspects that authorities should consider when developing resolution frameworks for failing CCPs, including:

- Policy objectives for CCP resolution to maintain financial stability;
- Powers that resolution authorities should have to maintain the continuity of critical CCP functions
- Use of loss allocation tools in resolution and provisions necessary to protect creditor rights so the triggering of resolution by authorities does not leave creditors worse off than if the authorities had not stepped in; and
- Steps authorities should take to establish crisis management groups for CCPs that are systemically important in more than one jurisdiction, develop resolution plans and conduct resolvability assessments.

The FSB will undertake further work on financial resources for CCP resolution and, based on further analysis and experience gained in resolution planning, determine by the end of 2018 whether it should develop further guidance on this issue.

[Press Release] [Guidance on CCP Resolution Planning]

2. Enterprise and consumer compliance

2.1 Senators introduce joint resolution to disapprove the CFPB prepaid rule

Seven senators introduced a joint resolution on February 1, 2017 seeking to disapprove the Consumer Financial Protection Bureau's (CFPB or Bureau) prepaid accounts rule under the Congressional Review Act. The CFPB's rule was published in October 2016 and is scheduled to become effective in October 2017. If the joint resolution of disapproval, S.J.Res. 19, is passed by both the Senate and the House of Representatives, and signed by the President, it would render the prepaid accounts rule without "force or effect." The resolution has been referred to the Senate Committee on Banking, Housing, and Urban Affairs. A vote has not yet been scheduled.

[S.J.Res 19 115th Congress]

2.2 Enforcement actions

The Consumer Financial Protection Bureau (CFPB or Bureau) announced the following enforcement actions in the past week:

- The CFPB entered into a consent order with a mortgage lender to address the CFPB's findings the lender paid illegal kickbacks in soliciting mortgage business referrals. Without admitting or denying the CFPB's allegations, the company agreed to pay $3.5 million in civil money penalties. The company is prohibited from future violations of the Real Estate Settlement Procedures Act and agreed to not pay for referrals or enter into any agreements with settlement service providers to endorse the use of their services. In conjunction with the case, the CFPB also entered into separate consent orders with two real estate brokerage firms and a mortgage servicers that the CFPB alleges participated in the kickback scheme. Together the three parties agreed to pay approximately $495,000 in consumer relief, repayment of ill-gotten gains, and civil money penalties.
- The CFPB took action against several law firms and attorneys that the CFPB alleges collaborated to charge illegal fees to consumers seeking debt relief services. The CFPB's complaint alleges that the defendants violated the Telemarketing Sales Rule by collecting upfront fees and by deceiving consumers about the fees charged.
- The CFPB entered into a consent order with a company offering a reloadable prepaid debit card product and its payments processor to address the CFPB's findings the company's failed to conduct adequate testing and preparation for the conversion of the prepaid account program to the new payment processor, which subsequently resulted in tens of thousands of customers being unable to access their funds. The CFPB also alleges the companies provided limited or no customer support to harmed consumers. Without admitting or denying the charges, the companies each agreed to the terms of the CFPB's consent order, which finds they violated the unfair and deceptive acts or practices provisions and the conduct provisions of the Consumer Financial Protection Act. The companies agreed to pay an estimated $10 million in restitution to harmed consumers, create a plan to prevent future problems, and pay a $3 million civil penalty to the CFPB.

3. Capital markets and investment management

3.1 Enforcement actions

The Commodity Futures Trading Commission (CFTC) announced that it had issued an order filing and simultaneously settling charges against a foreign bank to address the CFTC's findings that, over a five-year period, multiple traders at the bank attempted to manipulate the U.S. Dollar International Swaps and Derivatives Association Fix (USD ISDAFIX), a global benchmark reference in a range of interest rate products. In settling the charges, the bank, without admitting or denying the CFTC's charges, agreed to pay an $85 million civil monetary penalty and to undertake specific steps to implement and strengthen its internal controls and procedures, including measures to detect and deter trading potentially intended to manipulate swap rates such as USD ISDAFIX and to ensure the integrity of interest-rate swap benchmarks.

4. New administration actions

4.1 President Trump issues executive order to reduce regulations and regulatory cost

President Trump signed an executive order on January 30, 2017 that requires executive departments and agencies to identify at least two existing regulations to be repealed for each new regulation they "publicly propose for notice and comment or otherwise promulgate."

The order also requires cost caps to be put into place. The total incremental cost of all new regulations to be finalized during fiscal year 2017, including repealed regulations, is to be no greater than zero, unless otherwise required by law or consistent with advice provided in writing by the Director of the Office of Management and Budget. For fiscal years 2018 and beyond, the amount of allowable incremental cost will be conveyed to the agencies by the Director during the Presidential budget process.

The executive order does not apply to regulations issued with respect to a military, national security, or foreign affairs function of the United States; regulations related to agency organization, management, or personnel; or to any other category of regulations exempted by the Director. Further, the order does not apply to independent agencies, which include the Consumer Financial Protection Bureau and the federal bank and securities prudential regulators. [Executive Order Jan 30 2017]

4.2 President Trump issues memorandum on fiduciary rule

President Trump issued a presidential memorandum on February 3, 2017 that orders the Department of Labor to review the Fiduciary Duty Rule (generally referred to as the Conflicts of Interest rule) to determine if it "may adversely affect the ability of Americans to gain access to retirement information and financial advice." The Department of Labor is ordered to perform economic and legal analysis on the likely impact of the rule and propose a rule to rescind or revise the current rule if it determines that the rule has either (i) "harmed or is likely to harm investors due to a reduction of Americans' access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice"; (ii) "resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees;" and (iii) is "likely to cause an increase in litigation, and an increase in the prices that investors and retirees must pay to gain access to retirement services."

Compliance with the Fiduciary Duty Rule was required beginning in April 2017 although the memorandum does not address this point.

[Presidential Memorandum on Fiduciary Duty Rule]
[FTC Conflicts of Interest Rule Webpage]

4.3 President Trump issues executive order on financial regulatory principles

President Trump issued an executive order on February 3, 2017 that outlines high-level "Core Principles" for regulating the financial system and orders the Secretary of the Treasury to review how the current financial regulatory system supports these principles. The order states that the Core Principles of administration policy will be to:

- Empower Americans to make independent financial decisions and informed choices in the marketplace, save for retirement, and build individual wealth;
- Prevent taxpayer-funded bailouts;
- Foster economic growth and vibrant financial markets through more rigorous regulatory impact analysis that addresses systemic risk and market failures, such as moral hazard and information asymmetry;
- Enable American companies to be competitive with foreign firms in domestic and foreign markets;
- Advance American interests in international financial regulatory negotiations and meetings; and
- Restore public accountability within Federal financial regulatory agencies and rationalize the Federal financial regulatory framework.

The order also directs the Secretary of the Treasury to consult with the heads of the member agencies of the Financial Stability Oversight Council in a review of current "laws, treaties, regulations, guidance, reporting and recordkeeping requirements, and other Government policies" and report to the president within 120 days.

[Presidential Executive Order on Core Principles for Regulating the United States Financial System]

5. Financial crimes

5.1 Multiple agencies reach agreement with money services business to settle AML charges

In late January 2017, the Department of Justice (DOJ), the Federal Trade Commission (FTC), the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), and a number of U.S. Attorneys' Offices reached an agreement with a global money services business to settle charges that the company failed to maintain an effective anti-money laundering (AML) program and aided and abetted wire fraud. Some of the allegations included i) employing deficient anti-fraud policies and procedures; ii) utilizing agents who were not properly vetted but were bringing money to and from a foreign jurisdiction; iii) failing to discipline or turning a blind eye toward problem agents; and iv) in some instances, allowing transactions that were knowingly structured to avoid reporting requirements.

In settling the charges, the company agreed to pay a monetary fine of $586 million to the FTC and a $184 million civil penalty to FinCEN. The company is required to implement a comprehensive anti-fraud program that includes: training agents and front line associates; monitoring to detect and prevent fraud-induced money transfers; conducting due diligence on all new and renewing company agents; and suspending or terminating noncompliant agents. Additionally, the company is prohibited from transmitting a money transfer that it knows or reasonably should know is fraud-induced, and must:

- Block money transfers sent to any person who is the subject of a fraud report;
- Provide clear and conspicuous consumer fraud warnings on its paper and electronic money transfer forms;
- Increase the availability of websites and telephone numbers that enable consumers to file fraud complaints; and
- Refund a fraudulently induced money transfer if the company failed to comply with its anti-fraud procedures in connection with that transaction.

The company concurrently also entered into agreements with the DOJ and the U.S. Attorney's Offices for the Middle District of Pennsylvania, the Central District of California, the Eastern District of Pennsylvania, and the Southern District of Florida.

5.2 Federal Reserve joins FDIC action against a bank and its parent company for BSA-AML deficiencies

The Federal Reserve Board has joined the Federal Deposit Insurance Corporation (FDIC) in a Cease and Desist Order (C&D)

demanding that a bank holding company, its state member bank subsidiary, and various nonbank subsidiaries (collectively, the Bank) fix "significant deficiencies" identified in its firm wide compliance program with respect to Bank Secrecy Act/Anti-Money Laundering (BSA AML) compliance requirements. The Federal Reserve C&D order sets forth that the Bank must implement an effective BSA/AML firm wide compliance risk management program that is commensurate with its BSA/AML compliance risk profile. In addition, the Federal Reserve has required that the Bank's board submit a written plan that strengthens board oversight and lays out precisely what steps the board plans to take to bolster compliance risk management. This plan must, at a minimum, provide:

- Funding for qualified and trained personnel, systems, and other resources needed to operate a compliance risk management program with regard to the BSA/AML requirements that is commensurate with the Bank's risk profile;
- Specific measures to ensure adherence to the BSA/AML policies and procedures;
- Improvements to internal controls, policies and procedures; and
- Steps to improve information and reports provided to the board related to BSA/AML compliance.

In addition, the Bank is required to submit a Compliance Risk Management Program, written programs that will be submitted for approval to the Federal Reserve, and progress reports on the above every thirty (30) days.

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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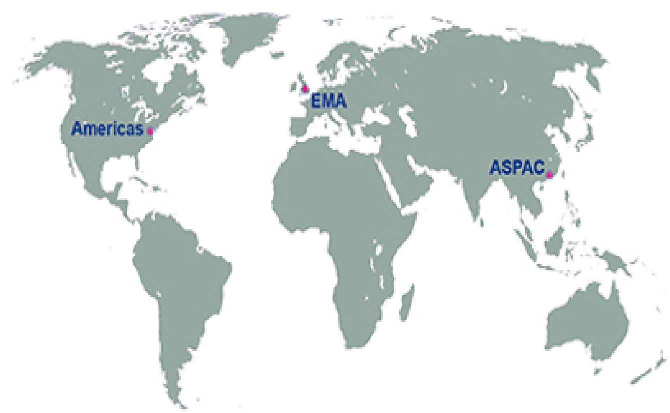

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